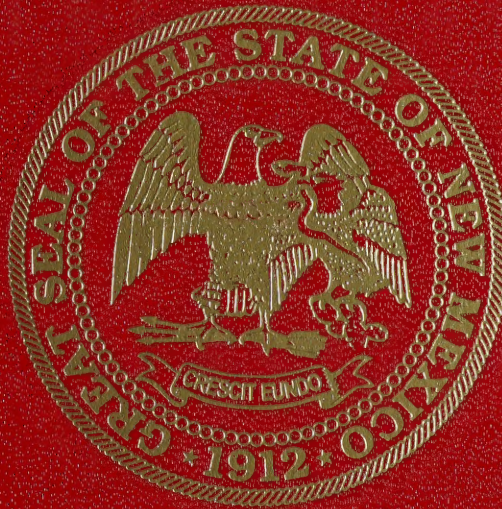


NEW MEXICO
STATUTES
1978

ANNOTATED

VOLUME 11



2022

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NEW MEXICO STATUTES 1978

ANNOTATED

2022

Volume 11

Chapter 60: Business Licenses

Chapter 61: Professional and Occupational Licenses

Chapter 62: Electric, Gas and Water Utilities

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This volume includes laws enacted through the Third Special Session of the Fifty-Fifth Legislature (2022 (3rd S.S.)) and annotations through 2022-NMSC-012 and 2022-NMCA-024.

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2022

This volume updates New Mexico Statutes Annotated, 1978 Compilation (NMSA 1978), through the legislation enacted at the Third Special Session of the 55th Legislature (2022 (3rd S.S.)). All permanent, general laws have been compiled. Other laws, such as applicability and severability clauses, have been noted in the annotations in the NMSA 1978 and published in the official Session Laws. Appropriations and bond authorizations, which are not compiled in the NMSA 1978, are also published in the official Session Laws.

The effect of amendments to the NMSA 1978 are given in brief form in a note following the amended section. The effective date of amendments and new laws compiled in the NMSA 1978 appears in a note following each section. For a listing of the placement of each section of the 2022 Session Laws, see the Tables of Disposition of Laws on *NMOneSource.com*.

Laws enacted without a specific effective date, or without an emergency clause, take effect pursuant to N.M. Const., Article IV, § 23 ninety (90) days after adjournment of the legislature. The effective date of the 2022 laws that took effect pursuant to Article IV, § 23 is May 18, 2022.

Legislation that was compiled, but had not taken effect at the time that the 2022 laws were printed, appears in italics to call attention to its postponed effectiveness. The effective date of these sections with postponed effective dates may be found in parentheses in the section headings. Sections that have been repealed by the legislature with an effective date after October, 2022 are published with the repeal dates in the heading at the beginning of the sections.

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ARTICLE 1

Horse Racing

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- 60-1-1. Repealed.
- 60-1-2. Repealed.
- 60-1-3. Repealed.
- 60-1-4. Repealed.
- 60-1-5. Repealed.
- 60-1-6. Repealed.

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 60-1-21. Repealed.
 60-1-22. Repealed.
 60-1-23. Repealed.
 60-1-24. Repealed.
 60-1-25. Repealed.
 60-1-25.1. Repealed.
 60-1-26. Repealed.

60-1-1. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-1 NMSA 1978, as enacted by Laws 1933, ch. 55, § 1, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-2. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-2 NMSA 1978, as enacted by Laws 1977, ch. 245, § 123, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-3. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-3 NMSA 1978, as enacted by Laws 1933, ch. 55, § 2, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-4. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-4 NMSA 1978, as enacted by Laws 1955, ch. 87, § 2, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-5. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-5 NMSA 1978, as enacted by Laws 1973, ch. 323, § 3, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-6. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-6 NMSA 1978, as enacted by Laws 1973, ch. 323, § 4, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-6.1. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-6.1 NMSA 1978, as enacted by Laws 1991, ch. 7, § 1, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-7. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-7 NMSA 1978, as enacted by Laws 1933, ch. 55, § 3, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-8. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-8 NMSA 1978, as enacted by Laws 1933, ch. 55, § 4, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

60-1-9. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-9 NMSA 1978, as enacted by Laws 1933, ch. 55, § 5, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

60-1-10. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-10 NMSA 1978, as enacted by Laws 1933, ch. 55, § 6, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

60-1-11. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-11 NMSA 1978, as enacted by Laws 1933, ch. 55, § 7, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

60-1-12. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-12 NMSA 1978, as enacted by Laws 1973, ch. 323, § 7, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

60-1-13. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-13 NMSA 1978, as enacted by Laws 1975, ch. 189, § 1, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

60-1-14. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-14 NMSA 1978, as enacted by Laws 1933, ch. 55, § 8, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

60-1-15. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-15 NMSA 1978, as enacted by Laws 1933, ch. 55, § 9, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

60-1-15.1. Repealed.

Repeals. — Laws 1991, ch. 195, § 8 repealed 60-1-15.1 NMSA 1978, as enacted by Laws 1985, ch. 137, § 3, relating to determination of amount of compensation for municipal services, effective June 14, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

Compiler's notes. — This section was also amended by Laws 1991, ch. 146, § 1, approved April 3, 1991. This

amendment was not given effect due to the repeal of this section by Laws 1991, ch. 115, § 8, approved April 4, 1991. *See* 12-1-8 NMSA 1978.

Laws 1992, ch. 110, § 2 enacted a section designated as 60-1-15.1 NMSA 1978, but, due to the prior existence of 60-1-15.1, that section was compiled as 60-1-15.2 NMSA 1978.

60-1-15.2. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-15.2 NMSA 1978, as enacted by Laws 1992, ch. 110, § 2, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-15.3. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-15.3 NMSA 1978, as enacted by Laws 1993, ch. 300, § 1, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-16. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-16 NMSA 1978, as enacted by Laws 1933, ch. 55, § 10, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-17. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-17 NMSA 1978, as enacted by Laws 1977, ch. 161, § 2, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-18. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-18 NMSA 1978, as enacted by Laws 1965, ch. 270, § 1, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-19. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-19 NMSA 1978, as enacted by Laws 1933, ch. 55, § 11, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-20. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-20 NMSA 1978, as enacted by Laws 1947, ch. 94, § 1, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-21. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-21 NMSA 1978, as enacted by Laws 1947, ch. 94, § 2, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-22. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-22 NMSA 1978, as enacted by Laws 1975, ch. 190, § 1, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-23. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-23 NMSA 1978, as enacted by Laws 1973, ch. 323, § 10, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, see the 2006 NMSA 1978 on NMSAOneSource.com.

60-1-24. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-24 NMSA 1978, as enacted by Laws 1973, ch. 323, § 11, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

60-1-25. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-25 NMSA 1978, as enacted by Laws 1991, ch. 195, § 6, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

60-1-25.1. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-25.1 NMSA 1978, as enacted by Laws 1991, ch. 195, § 4, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

60-1-26. Repealed.

Repeals. — Laws 2007, ch. 39, § 34, repealed 60-1-26 NMSA 1978, as enacted by Laws 1987, ch. 333, § 3, relating to the Horse Racing Act, effective July 1, 2007. For

provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

ARTICLE 1A

Horse Racing Act

Sec.

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- 60-1A-24. Breeders' awards. (Repealed effective July 1, 2028.)
- 60-1A-25. Violations of horse racing act; fourth degree felony. (Repealed effective July 1, 2028.)
- 60-1A-26. Illegal use of pari-mutuel wagering. (Repealed effective July 1, 2028.)
- 60-1A-27. Predetermining horse races; influencing or attempting to influence; fourth degree felony. (Repealed effective July 1, 2028.)

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60-1A-28. Affecting speed or stamina of a race horse; penalties. (Repealed effective July 1, 2028.)

60-1A-28.1. Racetrack licensees; power to eject or exclude. (Repealed effective July 1, 2028.)

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60-1A-29. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

60-1A-30. Temporary provisions [Terms continued]. (Repealed effective July 1, 2028.)

60-1A-1. Short title. (Repealed effective July 1, 2028.)

Chapter 60, Article 1A NMSA 1978 may be cited as the "Horse Racing Act".

History: Laws 2007, ch. 39, § 1.

Compiler's notes. — Laws 2007, ch. 39, § 34, repealed the former Horse Racing Act, § 60-1-23 NMSA 1978, and enacted a new Horse Racing Act, effective July 1, 2007.

For provisions of prior law, see the 2006 NMSA 1978 on *NMOneSource.com*.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

60-1A-2. Definitions. (Repealed effective July 1, 2028.)

As used in the Horse Racing Act:

- A. "board" means the gaming control board;
- B. "breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of ten;
- C. "commission" means the state racing commission;
- D. "exotic wagering" means all wagering other than on win, place or show, through pari-mutuel wagering;
- E. "export" means to send a live audiovisual broadcast of a horse race in the process of being run at a horse racetrack from the originating horse racetrack to another location;
- F. "guest state" means a jurisdiction, other than the jurisdiction in which a horse race is run, in which a horse racetrack, off-track wagering facility or other facility that is a member of and subject to an interstate common pool is located;
- G. "guest track" means a horse racetrack, off-track wagering facility or other licensed facility in a location other than the state in which a horse race is run that is a member of and subject to an interstate common pool;
- H. "handle" means the total of all pari-mutuel wagering sales, excluding refunds and cancellations;
- I. "horse race" means a competition among racehorses on a predetermined course in which the horse completing the course in the least amount of time generally wins;
- J. "host state" means the jurisdiction within which a sending track is located, also known as a "sending state";
- K. "host track" means the horse racetrack from which a horse race subject to an interstate common pool is transmitted to members of that interstate common pool, also known as a "sending track";
- L. "import" means to receive a live audiovisual broadcast of a horse race;
- M. "interstate common pool" means a pari-mutuel pool that combines comparable pari-mutuel pools from one or more locations that accept wagers on a horse race run at a sending track for purposes of establishing payoff prices at the pool members' locations, including pools in which pool members from more than one state simultaneously combine pari-mutuel pools to form an interstate common pool;
- N. "jockey club" means an organization that administers thoroughbred registration records and registers thoroughbreds;
- O. "licensed premises" means land, together with all buildings, other improvements and personal property located on the land, that is under the direct control of a racetrack licensee, including the restricted areas, grandstand and public parking areas;
- P. "licensee" means a person licensed by the commission and includes a holder of an occupational, secondary or racetrack license;
- Q. "occupational license" means a license issued by the commission to a vendor or to a person having access to a restricted area on the licensed premises, including a horse owner, trainer, jockey,

agent, apprentice, groom, exercise person, veterinarian, valet, farrier, starter, clocker, racing secretary, pari-mutuel clerk and other personnel designated by the commission whose work, in whole or in part, is conducted around racehorses or pari-mutuel betting windows;

R. "pari-mutuel wagering" means a system of wagering in which bets on a live or simulcast horse race are pooled and held by the racetrack licensee for distribution of the total amount, less the deductions authorized by law, to holders of winning tickets; "pari-mutuel wagering" does not include bookmaking or pool selling;

S. "pari-mutuel wagering pool" means the money wagered on a specific horse race through pari-mutuel wagering;

T. "practical breeder" means a person who has practical experience in breeding horses, although the person may not be actively involved in breeding horses;

U. "primary residence" means the domicile where a person resides for most of the year, and, if the person is temporarily out of state, the address where a person will return when the person returns to New Mexico or the address that a person uses for purposes of a driver's license, passport or voting;

V. "quarter horse" means a racehorse that is registered with the American quarter horse association or any successor association;

W. "race meet" means a period of time within dates specified by the commission in which a racetrack licensee is authorized to conduct live racing on the racing grounds;

X. "racehorse" means a quarter horse or thoroughbred that is bred and trained to compete in horse races;

Y. "racetrack license" means a license to conduct horse races issued by the commission;

Z. "racetrack licensee" means a person who has been issued a racetrack license;

AA. "racing grounds" means the area of the restricted area of licensed premises used for the purpose of conducting horse races and all activities ancillary to the conduct of horse races, including the track, stable area, jockey's quarters and horse training areas;

BB. "retainage" means money that is retained from wagers on win, place and show and on exotic wagers by a racetrack licensee pursuant to the Horse Racing Act;

CC. "restricted areas" means the stable area, the area behind the pari-mutuel betting windows and anywhere on the racing grounds;

DD. "secondary licensee" means all officers, directors, shareholders, lenders or holders of evidence of indebtedness of a corporation or legal entity owning a horse racetrack, and all persons holding a direct or indirect interest of any nature whatsoever in the horse racetrack, including interests or positions that deal with the funds of the racetrack or that are administrative, policy-making or supervisory;

EE. "simulcast" means a transmission of a live audiovisual broadcast of a horse race being run at a horse racetrack other than the horse racetrack or other licensed facility at which the broadcast is being received for viewing pursuant to a simulcasting contract;

FF. "stakes race" means a horse race in which nominations or entry or starting fees contribute to the purse; an overnight race is not a stakes race;

GG. "steward" means an employee of the commission who supervises horse races and oversees a race meet while in progress, including holding hearings regarding licensees and enforcing the rules of the commission and the horse racetrack;

HH. "takeout" means amounts authorized by statute to be deducted from the pari-mutuel wagers;

II. "thoroughbred" means a racehorse that is registered with the jockey club;

JJ. "track" means the surfaced oval area on which horse races are conducted; and

KK. "vendor" means a person who provides goods or services to or in the racing grounds or restricted area of the licensed premises of a horse racetrack.

History: Laws 2007, ch. 39, § 2.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Participants' fraud not covered. — Disputes involving losses through the fraud of one participant in a

claiming race against another participant were never intended to be settled by the track authorities under this section or any rule adopted pursuant thereto. *Grandi v. LeSage*, 1965-NMSC-017, 74 N.M. 799, 399 P.2d 285 (decided under former law.)

60-1A-3. Commission created; appointment of members; terms of office. (Repealed effective July 1, 2028.)

A. The "state racing commission" is created and is administratively attached to the tourism department.

B. The commission shall consist of five members, no more than three of whom shall be members of the same political party. The commission members shall be appointed by the governor and be confirmed by the senate. All members of the commission shall hold at-large positions on the commission.

C. At least three of the members of the commission shall be practical breeders of racehorses within New Mexico.

D. A commission member shall have primary residence in New Mexico and shall be of high character and reputation so that public confidence in the administration of horse racing is maintained.

E. The term of each member of the commission shall be six years from the date of the member's appointment. The member shall serve until a successor is appointed. In the case of a vacancy in the membership of the commission, the governor shall fill the vacancy by appointment for the unexpired term.

F. A person shall not be eligible for appointment as a member of the commission who is an officer, official or director in a corporation conducting horse racing within the state.

G. Members of the commission shall receive no salary, but each member of the commission shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

H. The commission may appoint an executive director and establish the executive director's duties and compensation.

History: Laws 2007, ch. 39, § 3.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Cross references. — For continuation of terms of commissions, see 60-1A-30 NMSA 1978.

60-1A-4. Commission; powers; duties. (Repealed effective July 1, 2028.)

A. The commission may:

(1) grant, deny, suspend or revoke occupational licenses, secondary licenses and racetrack licenses, establish the terms for each classification of a racetrack license and set fees for submitting an application for a license;

(2) exclude or compel the exclusion of a person from all horse racetracks who the commission deems detrimental to the best interests of horse racing or who willfully violates the Horse Racing Act, a rule or order of the commission or a law of the United States or New Mexico;

(3) compel the production of documents, books and tangible items, including documents showing the receipts and disbursements of a racetrack licensee;

(4) investigate the operations of a licensee and place a designated representative on the licensed premises of a racetrack licensee for the purpose of observing compliance with the Horse Racing Act and rules or orders of the commission;

(5) employ staff as required to administer the Horse Racing Act and employ staff with basic law enforcement training to be stationed at racetracks to maintain peace and order, enforce the law, conduct investigations and enforce the Horse Racing Act or rules or orders of the commission; provided that staff employed with law enforcement training may not carry firearms or other deadly weapons while on duty for the commission;

(6) summon witnesses;

(7) administer oaths for the effective discharge of the commission's authority; and

(8) appoint a hearing officer to conduct hearings required by the Horse Racing Act or a rule adopted pursuant to that act.

B. The commission shall:

(1) make rules to hold, conduct and operate all race meets and horse races held in the state and to identify and assign racing dates;

- (2) require the following information for each applicant on an application for a license:
 - (a) the full name, address and contact information of the applicant, and if the applicant is a corporation, the name of the state of incorporation and the names, addresses and contact information of officers, members of the board of directors and managers of the corporation;
 - (b) the exact location at which the applicant desires to conduct a horse race or race meet;
 - (c) whether the horse racetrack is owned or leased, and, if leased, the name and residence of the fee owner of the land or, if the owner is a corporation, the names of the directors and stockholders;
 - (d) a statement of the assets and liabilities of the person or corporation making the application;
 - (e) the kind of racing to be conducted;
 - (f) the beginning and ending dates desired for the race meet and the days during that time period when horse races are to be scheduled; and
 - (g) other information determined by the commission to be necessary to assess the potential for success of the applicant;
- (3) require a statement under oath by the applicant that the information on the application is true;
- (4) supervise and oversee the making of pari-mutuel pools and the distribution from those pools;
- (5) make on-site inspections of horse racetracks in New Mexico at reasonable intervals;
- (6) approve all improvements proposed to be completed on the licensed premises of a horse racetrack, including extensions, additions or improvements of buildings, stables or tracks;
- (7) monitor and oversee the pari-mutuel machines and equipment at all horse races or race meets held in the state;
- (8) approve contracts for simulcasting, pari-mutuel wagering and capital improvements funded pursuant to Section 60-1A-20 NMSA 1978 entered into by horse racetracks;
- (9) regulate the size of the purses to be offered at horse races run in the state;
- (10) require background investigations of employees of a racetrack licensee as set forth in the rules of the commission; and
- (11) provide an annual report to the governor regarding the commission's administration of horse racing in the state.

History: Laws 2007, ch. 39, § 4.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Cross references. — For continuation of terms of commissions, see 60-1A-30 NMSA 1978.

For rule-making authority of racing commission, see 60-1A-4 NMSA 1978.

For Uniform Parentage Act, see 40-11-1 NMSA 1978 et seq.

ANNOTATIONS

Commission's determinations deemed final, not ministerial. — The legislature would not have taken such great pains to provide for the selection of qualified persons to constitute the commission's membership were the commission to perform solely ministerial acts. The legislature not only provided for the selection of persons eminent in their field and gave them authority to grant and/or refuse and revoke licenses, but further provided in Section 60-1-9 NMSA 1978 (now Section 60-1A-11 NMSA 1978) that the commission's determinations should be final and conclusive and not subject to any appeal. *Ross v. State Racing Comm'n*, 1958-NMSC-117, 64 N.M. 478, 330 P.2d 701 (decided under former law).

Racing commission has broad and sweeping powers. — The legislature in its wisdom intended to confer broad discretionary powers of licensing upon

the commission as an expert body. *Ross v. State Racing Comm'n*, 1958-NMSC-117, 64 N.M. 478, 330 P.2d 701 (decided under former law).

Commission deemed to have acted arbitrarily. — Having requested no financial information and the statutory provisions requiring none, the commission acted arbitrarily in making the finding that there was no sufficient showing that the enterprise would be a financial success, upon which it based the denial of petitioners' license. The petitioners should have been afforded the opportunity to submit financial or other necessary information so that the commission could properly exercise its discretion in granting or refusing a license. *Ross v. State Racing Comm'n*, 1958-NMSC-117, 64 N.M. 478, 330 P.2d 701 (decided under former law).

Strict liability may be imposed by the state as a right to participate in horse races or to hold a license to do so. *Sanderson v. N.M. State Racing Comm'n*, 1969-NMSC-031, 80 N.M. 200, 453 P.2d 370 (decided under former law).

Authority of commission to prevent drug use. — Since the risk is so great that a race might be conducted unfairly when a horse has drugs in its body, the commission in its discretion can provide that the urine or other sample be totally free of drugs under the authority of this section. *Sanderson v. N.M. State Racing Comm'n*, 1969-NMSC-031, 80 N.M. 200, 453 P.2d 370 (decided under former law).

License deemed privilege and not vested property right subject to due process. — The state may prescribe strict liability under which it will grant a licensee to participate therein, the terms of compliance by rules and regulations promulgated by the commission and likewise the terms under which the license may be suspended or revoked. A license is a privilege and not a right within the meaning of the due process clause of the state and federal constitutions and in it licensees have no vested property rights. *Sanderson v. N.M. State Racing Comm'n*, 1969-NMSC-031, 80 N.M. 200, 453 P.2d 370 (decided under former law).

State racing commission has no common-law or inherent powers and can act only as to those matters which are within the scope of its delegated authority. 1979 Op. Att'y Gen. No. 79-15 (rendered under former law).

Commission not authorized to issue free passes. — The commission might require that licensed tracks charge no admission fee, or that they charge no admission fee for certain groups or at certain times or that they offer some other kind of promotional program, but it cannot be fairly inferred that the commission itself is authorized to issue free passes. 1979 Op. Att'y Gen. No. 79-15 (rendered under former law).

Commission may allow race meet to occur at two different locations. — The commission is not prohibited from allowing a race meet to occur at two different locations, and may approve a licensee's application for a race meet that begins at one of the licensee's facilities and

concludes at another of the licensee's facilities. 1987 Op. Att'y Gen. No. 87-78 (rendered under former law).

Commission may hire husband and wife to carry on the duties of the commission so long as no such employee is related to the commission within the degree of consanguinity prohibited by Section 10-1-10 NMSA 1978. 1951 Op. Att'y Gen. No. 51-5424 (rendered under former law).

Commission has no implied authority to acquire real estate and erect buildings for its own use, nor may it use surplus funds for maintenance of a state fair race track. 1954 Op. Att'y Gen. No. 54-5914 (rendered under former law).

Withholding taxes for "seasonal" employees. — The state racing commission is responsible for withholding tax and social security tax on fees paid to "seasonal" employees. 1957 Op. Att'y Gen. No. 57-230 (rendered under former law).

State racing commission has broad and sweeping powers to regulate horse racing and wagering thereon. 1963 Op. Att'y Gen. No. 63-115 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 27A Am. Jur. 2d Entertainment and Sports Law § 10.

Judicial review of administrative ruling affecting conduct or outcome of publicly regulated horse, dog, or motor vehicle race, 36 A.L.R.4th 1169.

30A C.J.S. Entertainment and Amusement § 26 et seq.

60-1A-5. Commission rules; all licenses; suspension, revocation or denial of licenses; penalties. (Repealed effective July 1, 2028.)

A. The commission shall adopt rules to implement the Horse Racing Act and to ensure that horse racing in New Mexico is conducted with fairness and that the participants and patrons are protected against illegal practices.

B. Every license issued by the commission shall require the licensee to comply with the rules adopted by the commission. A racetrack licensee shall post printed copies of the rules in conspicuous places on the racing grounds and shall maintain them during the period when live horse races are being conducted.

C. The commission may suspend, revoke or deny renewal of a license of a person who violates the provisions of the Horse Racing Act or rules adopted pursuant to that act. The commission shall provide a licensee facing suspension, revocation or denial of renewal of a license reasonable notice and an opportunity for a hearing. The suspension, revocation or denial of renewal of a license shall not relieve the licensee from prosecution for the violations or from the payment of fines and penalties assessed the licensee by the commission.

D. The commission may impose civil penalty fines upon a licensee for a violation of the provisions of the Horse Racing Act or rules adopted by the commission. The fines shall not exceed one hundred thousand dollars (\$100,000) or one hundred percent of a purse related to the violation, whichever is greater, for each violation.

E. Fines shall be paid into the current school fund.

F. When a penalty is imposed pursuant to this section for administering a performance-altering substance as provided in Subsection A of Section 60-1A-28 NMSA 1978, the commission shall direct its executive director to report the violation to the district attorney for the county in which the violation occurred and to the horse racing licensing authority in any other jurisdiction in which the licensee being penalized is also licensed.

History: Laws 2007, ch. 39, § 5; 2013, ch. 103, § 1.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Cross references. — For continuation of terms of commissions, see 60-1A-30 NMSA 1978.

The 2013 amendment, effective June 14, 2013, increased the civil penalties for violations of the act; provided

for the report of violations to the district attorney; in Subsection A, after "against illegal practices", deleted "on the racing grounds"; in Subsection D, in the first sentence, after "impose civil", deleted "penalties" and added "penalty fines" and in the second sentence, after "shall not exceed", deleted "ten thousand dollars (\$10,000)" and added "one hundred thousand dollars (\$100,000) or one hundred percent of a purse related to the violation, whichever is greater"; in Subsection E, at the beginning of the sentence, added "Fines"; and added Subsection F.

ANNOTATIONS

Section legalizes pari-mutuel betting under fixed conditions and declares that it shall not be construed as gambling. *Patton v. Fortuna Corp.*, 1960-NMSC-136, 68 N.M. 40, 357 P.2d 1090 (decided under former law).

Unjust enrichment rule overridden by public policy against gambling. — The public policy of New Mexico is to restrain and discourage gambling and must override the rule which prevents unjust enrichment, particularly where there is a choice between that which is considered to be for the benefit of the public at large as distinguished from any benefit to an individual litigant. *Schnoor v. Griffin*, 1968-NMSC-067, 79 N.M. 86, 439 P.2d 922 (decided under former law).

One not physically present at track not considered patron. — It was the intention of the legislature to exempt pari-mutuel betting from the general provisions of the gambling laws only when done by patrons who are physically present at the track and one who is not personally present at the track is not a patron thereof and does not come within the pari-mutuel exemption. *Schnoor*

v. Griffin, 1968-NMSC-067, 79 N.M. 86, 439 P.2d 922 (decided under former law).

Authority to suspend trainer, regardless of guilty intent or knowledge. — State racing commission has authority under this section to make rules imposing strict accountability upon the trainer for the condition of a horse he enters in a race and requiring suspension if he enters a horse which is then shown by competent analysis to have any prohibited substances in its urine, saliva, blood or body, regardless of proof of guilty intent or knowledge on the part of the trainer. *Jamison v. State Racing Comm'n*, 1973-NMSC-028, 84 N.M. 679, 507 P.2d 426 (decided under former law).

Authority to rule horse off track. — All who enter horses in state races are aware of the track rules and that they exist so as to allow a track veterinarian to rule a horse off the track without recourse on the part of the owner to secure the entry fee which he has paid. 1957 Op. Att'y Gen. No. 57-177 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gambling § 58.

Pari-mutuel and similar betting methods on race as game of chance or gambling, 52 A.L.R. 74.

Constitutionality of statute which affirmatively permits pari-mutuel method of wagering at race tracks, 85 A.L.R. 622.

Statutes permitting specified forms of betting, construction and application of, 117 A.L.R. 828.

Winner's rights and remedies in respect of pari-mutuel and similar legalized betting systems, 165 A.L.R. 838.

Validity, construction, and application of statute or ordinance prohibiting or regulating use of messenger services to place wagers in pari-mutuel pool, 78 A.L.R.4th 483.

38 C.J.S. Gaming § 28.

60-1A-6. Classification of racetrack licenses. (Repealed effective July 1, 2028.)

A. A license to conduct a race meet in New Mexico shall be classified as either a class A or class B license, determined by the commission as follows:

(1) a class A racetrack license shall be issued to a racetrack licensee who received from all race meets in the preceding calendar year a gross amount wagered through the pari-mutuel system of ten million dollars (\$10,000,000) or more; and

(2) a class B racetrack license shall be issued to a racetrack licensee who received from all race meets in the preceding calendar year a gross amount wagered through the pari-mutuel system of less than ten million dollars (\$10,000,000).

B. A new racetrack license to conduct a race meet in New Mexico shall be given a classification by the commission based on an estimate of the anticipated gross amounts projected to be received by the new racetrack licensee from all pari-mutuel wagering in the racetrack licensee's first full calendar year of racing. After the racetrack licensee's first full calendar year of racing, the commission shall review the classification and change it if necessary.

C. Each class of license is subject to all provisions of the Horse Racing Act, except as otherwise provided in that act. The commission shall adopt and promulgate rules necessary to provide for license classification.

History: Laws 2007, ch. 39, § 6.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

60-1A-7. All license applications; background investigations; rules. (Repealed effective July 1, 2028.)

A. A person applying for a license pursuant to the Horse Racing Act shall submit to a background investigation to be conducted by the board. The commission and the board shall adopt

rules to coordinate the manner in which the background investigations are conducted. The rules shall at minimum require that:

(1) an applicant for a license shall submit two fingerprint cards to the commission, with one card to be submitted to the board for a statewide check and the other card to be submitted to the federal bureau of investigation for a nationwide check;

(2) arrest record information from a law enforcement agency or the federal bureau of investigation and information obtained as a result of the background investigation conducted by the board is privileged and shall not be disclosed to persons not directly involved in the decision affecting the specific applicant;

(3) an applicant shall provide all of the information required by the commission; and

(4) the cost of the background investigation shall be paid by the applicant.

B. An applicant for a license who is denied the license by the commission shall have an opportunity to inspect and challenge the validity of the record on which the denial of the license was based.

History: Laws 2007, ch. 39, § 7; 2019, ch. 209, § 3.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

The 2019 amendment, effective July 1, 2020, removed the requirement of submitting fingerprint cards upon license renewal; and in Subsection A, Paragraph A(1), after "applicant for license", deleted "or license renewal".

60-1A-8. Racetrack licenses; applications; specific requirements. **(Repealed effective July 1, 2028.)**

A. It is a violation of the Horse Racing Act for a person to hold a public horse race or a race meet for profit or gain in any manner unless the person has been issued a racetrack license by the commission and has been authorized by the commission to hold the horse race or race meet on specific dates.

B. An application for a racetrack license shall be submitted in writing on forms designated by the commission. An applicant shall affirm that information contained in the application is true and accurate. The application shall be signed by the applicant or the applicant's agent, and the signature shall be notarized.

C. A racetrack license shall be valid for a period not to exceed one year. The commission may renew a racetrack license upon expiration of the term of the license.

D. Renewal applications for racetrack licenses shall be filed no later than June 1 of each year. The race dates for the upcoming year shall be set by the commission after the commission receives all renewal applications.

E. An application shall specify the dates and days of the week of the race meet that the applicant is requesting the commission to approve.

F. An application shall be filed not less than sixty days prior to the first day the proposed horse race or race meet is to be held.

G. The fee for a new racetrack license issued pursuant to this section shall not exceed five thousand dollars (\$5,000).

H. The commission may schedule a date for a hearing on the application for a new racetrack license to determine the eligibility of the applicant pursuant to the Horse Racing Act or as needed for determining the eligibility for the renewal of a racetrack license. The applicant shall be notified of the hearing at least five days prior to the date of the hearing. The applicant has the right to present testimony in support of the application. Notice shall be mailed to the address of the applicant appearing upon the application for the racetrack license. Notice of the hearing date, time and location shall be postmarked by United States mail five days prior to the date of the hearing. Deposit of the hearing notice in United States mail constitutes notice.

I. If, after a hearing on the application, the commission finds the applicant ineligible pursuant to the provisions of the Horse Racing Act or rules adopted by the board, the racetrack license shall be denied.

J. If there is more than one application for a racetrack license pending at the same time, the commission shall determine the racing days that will be allotted to each successful applicant.

Upon renewal, the commission shall determine the racing days that will be allotted to each applicant upon terms and conditions established by the commission.

K. A person shall not have a direct, indirect or beneficial interest of any nature, whether or not financial, administrative, policymaking or supervisory, in more than two horse racetracks in New Mexico. For purposes of this subsection, a person shall not be considered to have a direct, indirect or beneficial interest in a horse racetrack if the person owns or holds less than ten percent of the total authorized, issued and outstanding shares of a corporation that is licensed to conduct a race meet in New Mexico, unless the person has some other direct, indirect or beneficial interest of any nature, whether or not financial, administrative, policymaking or supervisory, in more than two licensed horse racetracks.

L. To determine interest held in a racetrack, to the extent that the interest is based on stock ownership:

(1) stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries;

(2) an individual shall be considered as owning the stock, directly or indirectly, if it is held by an immediate family member. For purposes of this paragraph, an "immediate family member" includes only the individual's siblings, spouse or children; and

(3) stock constructively owned by a person by reason of the application of Paragraph (1) of this subsection shall be considered to be actually owned by the person; and stock shall be constructively owned by an individual by reason of the application of Paragraph (2) of this subsection if the purpose of the constructive ownership is to make a person other than the individual applicant appear as the owner of the stock.

M. A corporation holding a racetrack license shall not issue to a person shares of its stock amounting to ten percent or more of the total authorized, issued and outstanding shares, and a corporation holding a racetrack license shall not issue shares of its stock that would, when combined with that stock transferee's existing shares owned, total more than ten percent of the total authorized, issued and outstanding shares of the corporation, unless:

(1) the corporation gives written notice to the commission at least sixty days before the contemplated stock transfer that the person to whom the stock is being transferred will become an owner of ten percent or more of the total authorized, issued and outstanding shares of the corporation; and

(2) the corporation receives written approval from the commission of the proposed transfer.

N. A determination made by the commission of a matter pursuant to this section shall be final and not subject to appeal.

History: Laws 2007, ch. 39, § 8.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Cross references. — For rule-making authority of racing commission, see 60-1A-4 NMSA 1978.

For Uniform Parentage Act, see 40-11-1 NMSA 1978 et seq.

ANNOTATIONS

Licensee contracts to be submitted to commission for approval. — This section does not require a licensee

to obtain the approval of the racing commission before the licensee enters a contract. The statutory language refers to approval of contracts and thus presupposes an existing contract. Once the contract is entered, submission of the contract to the state racing commission for its approval is to be required, and if there is no submission for approval, the possible penalty is cancellation or revocation of the racing license. *Sierra Blanca Sales Co. v. Newco Indus., Inc.*, 1972-NMCA-153, 84 N.M. 524, 505 P.2d 867, cert. denied, 84 N.M. 512, 505 P.2d 855 (decided under former law).

60-1A-9. Secondary licenses; applications; specific requirements. (Repealed effective July 1, 2028.)

A. A person who is actively and directly engaged in the administration of a horse racetrack, whether in a financial, administrative, policymaking or supervisory capacity, shall hold a secondary license issued by the commission.

B. An application for a secondary license shall be submitted in writing on forms designated by the commission. An applicant shall affirm that information contained in the application is true

and accurate. The application shall be signed by the applicant or the applicant's agent, and the signature shall be notarized.

C. If an applicant for a racetrack license is a corporation, all officers, directors, lenders or holders of evidence of indebtedness of the corporation and all persons who participate in any manner in a financial, administrative, policymaking or supervisory capacity are required to hold a secondary license issued by the commission.

D. A person who owns or holds, directly, indirectly or beneficially, ten percent or more of the total authorized, issued and outstanding shares of a corporation that is a racetrack licensee is required to hold a secondary license issued by the commission. If the commission finds that a person who owns or holds, directly, indirectly or beneficially, ten percent or more of the total authorized, issued and outstanding shares of a corporation that is a racetrack licensee is unqualified to be issued a secondary license, the commission shall give notice of its finding to the corporation and to the person owning or holding the interest. The ineligible person shall without delay offer the shares to the corporation for purchase. If the corporation does not elect to purchase the shares, the person owning or holding the interest may offer the interest to other purchasers, subject to prior approval of the purchasers by the commission.

E. A secondary license shall be valid for a period not to exceed three years. The commission may renew a secondary license upon expiration of the term of the license.

F. The fee for a secondary license issued pursuant to this section shall not exceed five hundred dollars (\$500).

History: Laws 2007, ch. 39, § 9.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

60-1A-10. Occupational licenses; application; specific requirements. (Repealed effective July 1, 2028.)

A. A person required by the Horse Racing Act to have an occupational license shall apply for and may be issued an occupational license by the commission.

B. An application for an occupational license shall be submitted in writing on forms designated by the commission. An applicant shall affirm that information contained in the application is true and accurate. The application shall be signed by the applicant or the applicant's agent.

C. An occupational license shall be valid for a period not to exceed five years. The commission may renew an occupational license upon expiration of the term of the license.

D. The fee for an occupational license issued pursuant to this section shall not exceed one hundred dollars (\$100).

History: Laws 2007, ch. 39, § 10.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

ANNOTATIONS

Authority to suspend trainer, regardless of guilty intent or knowledge. — State racing commission had authority under this section to make rules imposing strict

accountability upon trainer for the condition of a horse he enters in a race and requiring suspension if he enters a horse which is then shown by competent analysis to have any prohibited substances in its urine, saliva, blood or body, regardless of proof of guilty intent or knowledge on the part of the trainer. *Jamison v. State Racing Comm'n*, 1973-NMSC-028, 84 N.M. 679, 507 P.2d 426 (decided under former law).

60-1A-11. Granting a license; standards; denial and revocation; suspension and penalties. (Repealed effective July 1, 2028.)

A. A license shall not be issued or renewed unless the applicant has satisfied the commission that the applicant:

- (1) is of good moral character, is honest and has integrity;
- (2) does not currently have a license suspended by a horse racing licensing authority in another jurisdiction;
- (3) does not have any prior activities, criminal record, reputation, habits or associations that:

- (a) pose a threat to the public interest;
- (b) pose a threat to the effective regulation and control of horse racing; or
- (c) create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of horse racing, the business of operating a horse racetrack licensed pursuant to the Horse Racing Act or the financial activities incidental to operating a horse racetrack;
- (4) is qualified to be licensed consistent with the Horse Racing Act;
- (5) has sufficient business probity, competence and experience in horse racing as determined by the commission;
- (6) has proposed financing that is sufficient for the nature of the license and from a suitable source that meets the criteria set forth in this subsection; and
- (7) is sufficiently capitalized pursuant to standards set by the commission to conduct the business covered by the license.

B. The commission shall establish by rule additional qualifications for a licensee as it deems in the public interest.

C. A person issued or applying for an occupational license who has positive test results for a controlled substance or who has been convicted of a violation of a federal or state controlled substance law shall be denied a license or shall be subject to revocation of an existing license unless sufficient evidence of rehabilitation is presented to the commission.

D. The commission may deny or revoke an occupational license if the applicant or occupational licensee, for the purpose of stimulating or depressing a racehorse or affecting its speed or stamina during a race or workout, is found to have administered, attempted to administer or conspired to administer to a racehorse, internally, externally or by injection, a drug, chemical, stimulant or depressant, or other prohibited substance as defined by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission.

E. In addition to its authority to deny or revoke an occupational license for the conduct described in Subsection D of this section, the commission may suspend a license and impose fines on a licensee. For suspensions and fines, the commission shall adopt as its own rules the model rules for the imposition of penalties for the use of prohibited substances published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar rules that are generally accepted in the horse racing industry as determined by the commission.

F. The commission shall revoke for a period not to exceed five years an occupational license if the occupational licensee used, attempted to use or conspired with others to use an electrical or mechanical device, implement or instrument for the purpose of affecting the speed or stamina of a racehorse.

G. The burden of proving the qualifications of an applicant or licensee to be issued a license or have a license renewed shall be on the applicant or licensee.

History: Laws 2007, ch. 39, § 11; 2013, ch. 103, § 2; 2017, ch. 28, § 1; 2017, ch. 145, § 1.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Cross references. — For duty of the gaming control board to conduct background investigations pursuant to the Horse Racing Act, see 60-2E-7 NMSA 1978.

Duplicate amendments. — Laws 2017, ch. 28, § 1 and Laws 2017, ch. 145, § 1, both effective July 1, 2017, enacted identical amendments to this section. The section is set out as amended by Laws 2017, ch. 28, § 1. See compiler's note below.

Compiler's notes. — Laws 2017, ch. 28, § 1, was signed into law by the governor on March 30, 2017.

Senate Bill 184 (Laws 2017, ch. 145), enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed

by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 184 was chaptered into law by the Secretary of State.

Pursuant to 12-1-8 NMSA 1978, the section was set out as amended by Law 2017, ch. 28, § 1.

The 2017 amendment, effective July 1, 2017, removed certain exceptions to conduct that requires denial or revocation of an occupational license, and authorized the state racing commission to revoke occupational licenses for a period not to exceed five years if the licensee attempted

to use or conspired with others to use an electrical or mechanical device for the purpose of affecting the speed or stamina of a racehorse; in the catchline, added "denial and revocation; suspension and penalties"; in Subsection A, Paragraph A(1), after "character", deleted "honesty" and added "is honest", and after "and", added "has", and in Paragraph A(3), in the introductory clause, after "does not have", added "any"; deleted former Subsection D, which provided for the denial of occupational licenses for certain violations, and redesignated former Subsection E as new Subsection D; in Subsection D, deleted "An occupational license may be denied or revoked" and added "The commission may deny or revoke an occupational license", deleted the paragraph designation "(1)", after "stimulant or depressant, or other", deleted "performance altering" and added "prohibited", after "as determined by the commission", deleted "unless the applicant or occupational licensee has been specifically permitted to do so by the commission or a steward; or", and deleted former Paragraph E(2), which listed certain prohibited acts and exceptions; added new Subsections E and F, and redesignated former Subsection F as Subsection G; and in Subsection G, after "to be issued", added "a license".

The 2013 amendment, effective June 14, 2013, added the condition that the applicant does not have a license suspended in another jurisdiction; provided a nationally recognized classification of prohibited substances; added Paragraph (2) of Subsection A; in Subparagraph (c) of Paragraph (3) of Subsection A, after "operating a horse racetrack", added "licensed pursuant to the Horse Racing Act"; in Paragraph (1) of Subsection E, after "stimulant

or depressant, or", deleted "foreign substance not naturally occurring in a racehorse" and added "performance-altering substance as defined by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission"; in Paragraph (2) of Subsection E, after "implement or instrument, except", deleted "an ordinary whip" and added "a commission-approved riding crop"; and deleted former Subsection G, which provided that the commission's determination of a matter was final and not subject to appeal.

ANNOTATIONS

District judge has no jurisdiction to restrain state racing commission from enforcing the suspension of a jockey's license because of the failure of the jockey to first exhaust his administrative remedies. *State Racing Comm'n v. McManus*, 1970-NMSC-134, 82 N.M. 108, 476 P.2d 767 (decided under former law).

Mandamus available remedy when commission exceeds authority. — While suspension of petitioner's license and forfeiture of the purse ordinarily are matters within the discretion of the commission and not reviewable on appeal, mandamus is available to a petitioner to make certain that the commission does not exceed its authority under this section. *Sanderson v. N.M. State Racing Comm'n*, 1969-NMSC-031, 80 N.M. 200, 453 P.2d 370 (decided under former law).

60-1A-12. Stewards; powers; duties. (Repealed effective July 1, 2028.)

There shall be three stewards, licensed and employed by the commission, to supervise each horse race meet. One of the stewards shall be designated the presiding official steward of the race meet. Stewards, other than the presiding official steward, shall be employed subject to the approval of the racetrack licensee. All stewards shall be licensed or certified by a nationally recognized horse racing organization. Stewards shall exercise those powers and duties prescribed by commission rules. A decision or action of a steward may be reviewed or reconsidered by the commission.

History: Laws 2007, ch. 39, § 12.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

60-1A-13. Equine health and testing advisor; qualifications; duties. (Repealed effective July 1, 2028.)

The commission shall hire or contract with an equine health and testing advisor. An equine health and testing advisor shall be a doctor of veterinary medicine or shall hold a doctorate degree in chemistry or a related field and shall be knowledgeable and experienced in the techniques used for testing the specimens collected pursuant to Section 60-1A-14 NMSA 1978. The equine health and testing advisor shall exercise the duties prescribed by rules of the commission.

History: Laws 2007, ch. 39, § 13; 2017, ch. 28, § 2; 2017, ch. 145, § 2.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Duplicate amendments. — Laws 2017, ch. 28, § 2 and Laws 2017, ch. 145, § 2, both effective July 1, 2017, enacted identical amendments to this section. The section is set out as amended by Laws 2017, ch. 28, § 2. See compiler's note below.

Compiler's notes. — Laws 2017, ch. 28, § 2, was signed into law by the governor on March 30, 2017.

Senate Bill 184 (Laws 2017, ch. 145), enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 184 was chaptered into law by the Secretary of State.

Pursuant to 12-1-8 NMSA 1978, the section was set out as amended by Law 2017, ch. 28, § 2.

The 2017 amendment, effective July 1, 2017, required the state racing commission to hire or contract with an equine health and testing advisor, and removed the provision requiring the commission to designate an official chemist; in the catchline, deleted "Official chemist" and added "Equine health and testing advisor"; after "The commission shall", deleted "designate at least one official chemist" and added "hire or contract with an equine health and testing advisor", after "An", deleted "official

chemist" and added "equine health and testing advisor", after "shall", added "be a doctor of veterinary medicine or shall", after "techniques used for testing the", deleted "blood, urine and saliva of horses for drugs, chemicals, stimulants, depressants or other foreign substances not naturally occurring in a horse. The official chemist may be an employee of a private laboratory located in New Mexico or an employee of an agency of New Mexico" and added "specimens collected pursuant to Section 60-1A-14 NMSA 1978", and after "The", deleted "official chemist" and added "equine health and testing advisor".

60-1A-14. Testing specimens. (Repealed effective July 1, 2028.)

A. The commission shall adopt rules applying to the handling of pre- and post-race, out-of-competition and necropsy testing of blood serum plasma, urine or other appropriate test samples identified by the commission to be taken from racehorses, following guidelines that meet or exceed the standards established in model rules published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission.

B. Each specimen taken from a racehorse shall be divided into two or more samples, and:

(1) one sample, designated as the "official sample", shall be tested by the commission or its designated laboratory in order to detect the presence of unauthorized drugs, chemicals, stimulants, depressants or other prohibited substances as defined in guidelines published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission; and

(2) the remaining samples, each designated as a "split sample", may be forwarded by the commission to the scientific laboratory division of the department of health or maintained by the commission in a manner that meets or exceeds the guidelines identified in Paragraph (1) of this subsection.

C. After a positive test result on the official sample tested by the commission or its designated laboratory and upon a written request from the president, executive director or manager of the New Mexico horsemen's association on forms designated by the commission, a corresponding split sample shall be transferred to an independent laboratory in a manner prescribed by commission rule.

D. All samples shall be kept in a controlled environment for a period of time specified by the commission in each case.

E. The commission shall contract with an independent laboratory to maintain a quality assurance program. The laboratory shall meet or exceed the current national laboratory standards for the testing of drugs or other foreign substances in a horse, as established by the association of racing commissioners international, incorporated, or of a successor organization or, if none, of another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry.

History: Laws 2007, ch. 39, § 14; 2013, ch. 102, § 2; 2013, ch. 103, § 3; 2015, ch. 140, § 1; 2017, ch. 28, § 3; 2017, ch. 145, § 3.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Repeals. — Laws 2015, ch. 140, § 3 repealed Laws 2013, ch. 102, § 2, effective June 19, 2015.

Duplicate amendments. — Laws 2017, ch. 28, § 3 and Laws 2017, ch. 145, § 3, both effective July 1, 2017, enacted identical amendments to this section. The section is set out as amended by Laws 2017, ch. 28, § 3. See compiler's note below.

Compiler's notes. — Laws 2017, ch. 28, § 3, was signed into law by the governor on March 30, 2017.

Senate Bill 184 (Laws 2017, ch. 145), enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al., D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 184 was chaptered into law by the Secretary of State.

Pursuant to 12-1-8 NMSA 1978, the section was set out as amended by Law 2017, ch. 28, § 3.

The 2017 amendment, effective July 1, 2017, clarified the designation and handling of testing samples taken from racehorses; in Subsection B, after "two or more", deleted "equal", in Paragraph B(1), after "one sample", added "designated as the 'official sample'", after "depressants or other", deleted "performance altering substances" and added "prohibited substances", after "as defined", added "in guidelines published", in Paragraph B(2), deleted "second sample shall" and added "remaining samples, each designated as a 'split sample', may", after "department of health", added "or maintained by the commission in a manner that meets or exceeds the guidelines identified in Paragraph (1) of this subsection"; in Subsection C, after "positive test result on the", added "official", after "designated by the commission", deleted "the scientific laboratory division shall transmit the corresponding second sample to the New Mexico horsemen's association" and added "a corresponding split sample shall be transferred to an independent laboratory in a manner prescribed by commission rule"; and in Subsection D, deleted "The scientific laboratory division shall keep", after "All samples", added "shall be kept", and after "period of", deleted "at least three months" and added "time specified by the commission in each case".

The 2015 amendment, effective June 19, 2015, required the racing commission to adopt drug testing rules that meet or exceed standards in internationally recognized model rules; in Subsection A, after "handling", deleted "and" and added "of pre- and post-race, out-of-competition and necropsy", after "taken from racehorses", added the remainder of the sentence.

The 2013 amendment, effective June 14, 2013, provided a nationally recognized classification of prohibited substances; in Subsection A, after "handling and testing or", deleted "urine and other specimens" and added "blood serum plasma, urine or other appropriate test samples"; in Subsection B, in the introductory sentence, after "two or more", added "equal"; in Paragraph (1) of Subsection B, after "depressants or other", deleted "foreign substances not naturally occurring in a horse" and added the remainder of the sentence; in Subsection C, at the beginning of the sentence, after "After", deleted "an inclusive or" and added "a"; and in Subsection E, added the second sentence.

ANNOTATIONS

Retesting of specimens. — This section does not prohibit retesting of specimens after a clear official test has been had and the purse for the race released. *Claridge v. N.M. State Racing Comm'n*, 1988-NMCA-056, 107 N.M. 632, 763 P.2d 66 (decided under former law).

60-1A-14.1. Racehorse testing fund; created; purpose. (Repealed effective July 1, 2028.)

The "racehorse testing fund" is created in the state treasury. The purpose of the fund is to ensure the testing of racehorses at a laboratory that meets or exceeds the current national laboratory standards for the testing of drugs or other foreign substances not naturally occurring in a horse, as established by the association of racing commissioners international, incorporated, or of a successor organization or, if none, of another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry. The fund consists of one-half of the daily capital outlay tax appropriated and transferred pursuant to Paragraph (4) of Subsection A of Section 60-1A-20 NMSA 1978 and appropriations, gifts, grants and donations made to the fund. Income from investment of the fund shall be credited to the fund. The commission shall administer the racehorse testing fund, and money in the fund is appropriated to the commission for the handling of pre- and post-race, out-of-competition and necropsy testing of blood serum plasma, urine or other appropriate test samples taken from racehorses pursuant to Section 60-1A-14 NMSA 1978 and to compensate the equine health and testing advisor employed or selected pursuant to Section 60-1A-13 NMSA 1978. Any unexpended or unencumbered balance remaining in the racehorse testing fund at the end of a fiscal year in excess of six hundred thousand dollars (\$600,000) shall revert to the general fund. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission.

History: Laws 2013, ch. 102, § 1; 2015, ch. 140, § 2; 2017, ch. 28, § 4; 2017, ch. 145, § 4.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Duplicate amendments. — Laws 2017, ch. 28, § 4 and Laws 2017, ch. 145, § 4, both effective July 1, 2017, enacted identical amendments to this section. The section is set out as amended by Laws 2017, ch. 28, § 4. See compiler's note below.

Compiler's notes. — Laws 2017, ch. 28, § 4, was signed into law by the governor on March 30, 2017.

Senate Bill 184 (Laws 2017, ch. 145), enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New*

Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al., D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 184 was chaptered into law by the Secretary of State.

Pursuant to 12-1-8 NMSA 1978, the section was set out as amended by Law 2017, ch. 28, § 4.

The 2017 amendment, effective July 1, 2017, provided that money from the racehorse testing fund be used to compensate the equine health and testing advisor; after "incorporated", added "or of a successor organization or, if none, of another nationally recognized organization that has published substantially similar guidelines that

are generally accepted in the horse racing industry", and after "Section 60-1A-14 NMSA 1978", deleted "following guidelines that meet or exceed the standards established in model rules published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission", and added "and to compensate the equine health and testing advisor employed or selected pursuant to Section 60-1A-13 NMSA 1978".

The 2015 amendment, effective June 19, 2015, provided that money from the racehorse testing fund shall be administered by the racing commission for conducting drug testing of racehorses following guidelines that meet or exceed standards in internationally recognized model rules; after "appropriated to the commission for the handling", deleted "and" and added "of pre- and post-race, out-of-competition and necropsy", after "pursuant to Section 60-1A-14 NMSA 1978," added the remainder of the sentence.

60-1A-15. Pari-mutuel wagering authorized; gambling statutes do not apply. (Repealed effective July 1, 2028.)

A. A racetrack licensee may conduct pari-mutuel wagering on live horse races or on simulcasted horse races.

B. Pari-mutuel wagering may be conducted only on the licensed premises where a live horse race is conducted or where a simulcast horse race is televised or projected on the racing grounds of the licensed premises of a racetrack licensee.

C. The sale to patrons present on the licensed premises of a racetrack licensee of pari-mutuel tickets or certificates is not gambling as defined in Section 30-19-2 or 30-19-3 NMSA 1978.

D. Placing a wager while on the licensed premises of a racetrack licensee is not placing a bet pursuant to Section 30-19-1 NMSA 1978.

E. The licensed premises of a horse racetrack is not a gambling place as defined in Section 30-19-1 NMSA 1978.

History: Laws 2007, ch. 39, § 15.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

ANNOTATIONS

Section legalizes pari-mutuel betting under fixed conditions and declares that it shall not be construed as gambling. *Patton v. Fortuna Corp.*, 1960-NMSC-136, 68 N.M. 40, 357 P.2d 1090 (decided under former law).

Unjust enrichment rule overridden by public policy against gambling. — The public policy of New Mexico is to restrain and discourage gambling and must override the rule which prevents unjust enrichment, particularly where there is a choice between that which is considered to be for the benefit of the public at large as distinguished from any benefit to an individual litigant. *Schnoor v. Griffin*, 1968-NMSC-067, 79 N.M. 86, 439 P.2d 922 (decided under former law).

One not physically present at track not considered patron. — It was the intention of the legislature to exempt pari-mutuel betting from the general provisions

of the gambling laws only when done by patrons who are physically present at the track and one who is not personally present at the track is not a patron thereof and does not come within the pari-mutuel exemption. *Schnoor v. Griffin*, 1968-NMSC-067, 79 N.M. 86, 439 P.2d 922 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gambling § 58.

Pari-mutuel and similar betting methods on race as game of chance or gambling, 52 A.L.R. 74.

Constitutionality of statute which affirmatively permits pari-mutuel method of wagering at race tracks, 85 A.L.R. 622.

Statutes permitting specified forms of betting, construction and application of, 117 A.L.R. 828.

Winner's rights and remedies in respect of pari-mutuel and similar legalized betting systems, 165 A.L.R. 838.

Validity, construction, and application of statute or ordinance prohibiting or regulating use of messenger services to place wagers in pari-mutuel pool, 78 A.L.R.4th 483.

38 C.J.S. Gaming § 28.

60-1A-16. Simulcasting. (Repealed effective July 1, 2028.)

A. All simulcasting of horse races shall have prior approval of the commission, and the commission shall adopt rules concerning the simulcasting of horse races as provided in this section.

B. A racetrack licensee shall not be allowed to simulcast horse races unless that racetrack licensee offers at least seventeen days per year of pari-mutuel wagering on live horse races run on the premises of the racetrack licensee.

C. The commission may permit exporting of a horse race being run by a racetrack licensee to another racetrack licensee within New Mexico or exporting of a horse race from a racetrack licensee to another location holding a pari-mutuel or gaming license that allows simulcasting of a horse race from outside of the state or jurisdiction that licenses that out-of-state facility.

D. The commission may permit importing by a racetrack licensee of horse races that are being run at racetracks outside of the state licensed by a host state.

E. Pari-mutuel wagering on simulcast horse races shall be prohibited except on the licensed premises of a racetrack licensee during the licensee's race meet at the horse racetrack or when the racetrack licensee is importing a race meet from another New Mexico-licensed horse racetrack.

F. A New Mexico-licensed horse racetrack that is within a radius of eighty miles of any other New Mexico-licensed horse racetrack with a race meet in progress may only conduct pari-mutuel wagering on imported horse races if there is a written agreement between the two racetrack licensees allowing pari-mutuel wagering on imported horse races during the period of time that the live horse races are taking place.

History: Laws 2007, ch. 39, § 16.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

60-1A-17. Interstate common pool wagering; authorized. (Repealed effective July 1, 2028.)

A. Subject to the federal Interstate Horseracing Act of 1978, the commission may permit a racetrack licensee to participate in interstate common pools. All provisions of the Horse Racing Act that govern pari-mutuel wagering apply to pari-mutuel wagering in interstate common pools except as otherwise provided in this section.

B. Daily pari-mutuel tax and daily capital outlay tax shall not be imposed upon amounts wagered in an interstate common pool other than upon amounts wagered within New Mexico.

C. Subject to prior approval of the commission, the following provisions apply when a racetrack licensee participates in interstate common pools on a horse race that originates outside of New Mexico:

(1) a racetrack licensee may combine its pari-mutuel pools at the host track and other locations. The types of wagering, takeout, distribution of winnings and rules of racing in effect for pari-mutuel pools at the host track shall govern wagers placed in New Mexico and merged into the interstate common pool. Breakage for interstate common pools shall be calculated in accordance with the rules governing the host track and shall be distributed in a manner agreed upon by the racetrack licensee in New Mexico and the host track;

(2) with the concurrence of the host track, an interstate common pool that excludes the host track may be formed with the racetrack licensee in New Mexico and other locations outside of the host state. When an interstate common pool is formed pursuant to this paragraph, the commission may approve types of wagering, takeout, distribution of winnings, rules of racing and calculation of breakage that are different from those that are in effect in New Mexico; provided that the rules are applied consistently to all persons in the interstate common pool;

(3) the racetrack licensee may deduct from retainage resulting from an interstate common pool a reasonable fee to be paid to the person conducting the horse race at the host track for the privilege of conducting pari-mutuel wagering on the race and participating in the interstate common pool and for payment of costs incurred to transmit the simulcast horse race; and

(4) provisions of New Mexico law or contracts governing the distribution of daily pari-mutuel tax and daily capital outlay tax and breeders' or other awards and purses from the takeout from wagers placed in New Mexico shall remain in effect for wagers placed in an interstate common pool; provided that if the commission approves an adjustment in the takeout rate, the distribution of the takeout within New Mexico shall be adjusted proportionately to reflect the adjustment in the takeout rate; and provided further that with the concurrence of the racetrack licensee and the organization representing a majority of the breeders, horsemen or other persons entitled to shares of the distribution and subject to approval of the commission, the respective shares to breeders' or other awards or purses may be modified.

D. Subject to prior approval of the commission, the following provisions apply when a racetrack licensee in New Mexico participates in interstate common pools as a host track:

(1) a racetrack licensee may permit one or more of its horse races to be used for pari-mutuel wagering at, and may export a horse race to, one or more licensed sites outside of New Mexico. The racetrack licensee may also permit pari-mutuel pools in other locations to be combined with the racetrack licensee's comparable pari-mutuel wagering pools or with wagering pools established in other jurisdictions. The commission may modify its rules and adopt separate rules for the interstate common pools and their calculation of breakage; and

(2) except as otherwise provided in this section, New Mexico law or contracts governing the distribution of shares of the takeout for daily pari-mutuel tax or daily capital outlay tax and breeders' or other awards and purses shall remain in effect for amounts wagered within New Mexico in interstate common pools; provided that with the concurrence of the racetrack licensee of the host track and the organization representing a majority of the breeders, horsemen or other persons entitled to shares of the distribution, and subject to approval of the commission, the respective shares to breeders' or other awards or purses may be modified.

E. When the laws and rules of the host state and guest states permit, an interstate common pool may be established on a regional or other basis between two or more guest states and not include a merger into the host state's pari-mutuel wagering pool, in which case, one of the guest state's tracks shall serve as if it were the host track for the purposes of calculating the pari-mutuel wagering pool. An interstate common pool may include members located outside of the United States. Except as otherwise set forth in commission rules, participation by a person in an interstate common pool with wagering facilities in one or more states or jurisdictions shall not cause the participating person to be deemed to be doing business in a jurisdiction other than the jurisdiction in which that person is physically located.

F. The commission may adopt rules necessary to implement this section.

History: Laws 2007, ch. 39, § 17.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Cross references. — For the federal Interstate Horseracing Act of 1978, see 15 U.S.C. 3001.

60-1A-18. Daily pari-mutuel tax; imposed; rate. (Repealed effective July 1, 2028.)

A. The "daily pari-mutuel tax" is imposed on a racetrack licensee that offers pari-mutuel wagering at the racetrack licensee's licensed premises and shall be remitted to the taxation and revenue department for deposit in the general fund.

B. The daily pari-mutuel tax imposed on class A racetrack licensees pursuant to this section shall be:

(1) for each racing day a class A racetrack licensee offers pari-mutuel wagering on live on-track horse races, six hundred fifty dollars (\$650); provided, however, that a class A racetrack licensee shall deduct from the six hundred fifty dollars (\$650) and remit to the municipality in which the racetrack licensee is located one hundred fifty dollars (\$150) if the racetrack licensee is located in a municipality having a population according to the 2000 federal decennial census of:

(a) less than six thousand located in a county with a population of more than ten thousand but less than fifteen thousand; or

(b) more than eight thousand but less than ten thousand located in a county with a population of more than one hundred thousand but less than one hundred fifty thousand; and

(2) for each day a class A racetrack licensee offers no pari-mutuel wagering on live on-track horse races and offers solely pari-mutuel wagering on simulcast races pursuant to the Horse Racing Act, one-eighth percent of the racetrack licensee's gross daily handle, not to exceed three hundred dollars (\$300) per racing day.

C. The daily pari-mutuel tax imposed on a class B racetrack licensee pursuant to this section shall be:

(1) for each racing day a class B racetrack licensee offers pari-mutuel wagering on live on-track horse races, one-eighth percent of the racetrack licensee's gross daily handle, not to exceed three hundred dollars (\$300) per racing day; and

(2) for each day a class B racetrack licensee offers no pari-mutuel wagering on live on-track horse races and offers solely pari-mutuel wagering on simulcast races pursuant to the Horse Racing Act, one-eighth percent of the class B racetrack licensee's gross daily handle, not to exceed three hundred dollars (\$300) per racing day.

History: Laws 2007, ch. 39, § 18.

Cross references. — For the general fund, see 6-4-2

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

NMSA 1978.

60-1A-19. Retainage; New Mexico horse breeders' association and New Mexico horsemen's association; breakage; distribution of retained amounts. (Repealed effective July 1, 2028.)

A. Each racetrack licensee shall notify the commission at least thirty days prior to each race meet of the amount of exotic wager retainage that the racetrack licensee will retain pursuant to Paragraph (1) or (2) of this subsection. There shall be an amount retained by the racetrack licensee equal to:

(1) for a class A racetrack licensee:

(a) nineteen percent of the gross amount wagered on win, place and show, of which: 1) eighteen and three-fourths percent shall be retained by the racetrack licensee; and 2) one-fourth percent shall be remitted to the taxation and revenue department for deposit in the general fund; and

(b) not less than twenty-one percent and not greater than twenty-five percent of the gross amount wagered in exotic wagers; and

(2) for a class B racetrack licensee:

(a) not less than eighteen and three-fourths percent and not greater than twenty-five percent of the gross amount wagered daily on win, place and show; and

(b) not less than twenty-one percent and not greater than thirty percent of the gross amount wagered in exotic wagers.

B. There shall be retained by a racetrack licensee for allocation to the New Mexico horse breeders' association amounts equal to:

(1) five-eighths percent of the gross amount wagered on win, place and show to be allocated weekly to the New Mexico horse breeders' association for further distribution pursuant to the provisions of Subsection D of Section 60-1A-24 NMSA 1978; and

(2) one and three-eighths percent of the gross amount wagered in exotic wagers to be allocated weekly to the New Mexico horse breeders' association for further distribution pursuant to the provisions of Subsection D of Section 60-1A-24 NMSA 1978.

C. The breakage from the gross amount wagered through pari-mutuel wagering shall be retained by the licensee and allocated as follows:

(1) fifty percent of the total breakage shall be retained by the racetrack licensee; and

(2) fifty percent of the total breakage shall be allocated by the racetrack licensee to enhance the race purses of established stakes races that include only New Mexico-bred horses that are registered with the New Mexico horse breeders' association. The New Mexico horse breeders' association shall distribute the percentage designated to purses pursuant to Subsection D of Section 60-1-24 [60-1A-24] NMSA 1978, subject to the approval of the commission.

D. All money resulting from the failure of patrons who purchased winning pari-mutuel tickets during a race meet to redeem their winning tickets before the end of the sixty-day period immediately succeeding the closing day of the race meet or from all money resulting from the failure of patrons who purchased pari-mutuel tickets that were entitled to a refund but were not refunded by the end of the sixty-day period immediately following the race meet shall be apportioned as follows:

(1) thirty-three and thirty-three hundredths percent shall be retained by the racetrack licensee;

(2) thirty-three and thirty-four hundredths percent shall be distributed to the New Mexico horse breeders' association to enhance each racetrack licensee's established overnight purses for races that include only horses registered as New Mexico bred pursuant to Paragraph (3) of Subsection D of Section 60-1A-24 NMSA 1978, subject to the approval of the commission; and

(3) thirty-three and thirty-three hundredths percent shall be allocated to the New Mexico horsemen's association for purses.

E. One-half percent of the gross amount wagered on simulcast horse races broadcast to a horse racetrack in New Mexico shall be distributed by the racetrack licensee to the New Mexico horsemen's association for medical benefits for the members of the New Mexico horsemen's association. The commission shall by rule provide for the timing and manner of the distribution required pursuant to this subsection and shall audit or arrange for an independent audit of the distributions required.

F. Amounts to be deducted from the retainage by the racetrack licensee from any form of wager made on the licensed premises of the racetrack licensee are:

- (1) the daily pari-mutuel tax imposed by Section 60-1A-18 NMSA 1978;
- (2) money allocated in this section to the New Mexico horse breeders' association;
- (3) money allocated by this section to the New Mexico horsemen's association;
- (4) expenses incurred to engage in intrastate simulcasting pursuant to the Horse Racing Act; provided that the deduction for a racetrack licensee shall be a portion of five percent of the gross amount wagered at all the sites receiving the same simulcast horse races and:

(a) the deduction for a racetrack licensee shall be an amount allocated to the racetrack licensee by agreement voluntarily reached between all the racetracks sending or receiving the same simulcast horse races; or

(b) the deduction for a racetrack licensee shall be an amount identified by the commission if all the racetracks sending or receiving the same simulcast horse races fail to reach a voluntary agreement on the level at which to set the rate of the deduction for expenses incurred for engaging in intrastate simulcasting; and

- (5) fees incurred to receive interstate simulcasts pursuant to the Horse Racing Act.

G. A racetrack licensee shall allocate to the New Mexico horse breeders' association five percent of the daily retainage on interstate common pools received from a guest state by a racetrack licensee. Of the net retainage from all wagers, after deductions:

- (1) fifty percent shall be allocated to purses; and
- (2) fifty percent shall be retained by the racetrack licensee.

History: Laws 2007, ch. 39, § 19.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

60-1A-20. Daily capital outlay tax; capital outlay offset; state fair commission distribution; daily license fees. (Repealed effective July 1, 2028.)

A. A "daily capital outlay tax" of two and three-sixteenths percent is imposed on the gross amount wagered each day at a racetrack where horse racing is conducted on the premises of a racetrack licensee and also on the gross amount wagered each day when a racetrack licensee is engaged in simulcasting pursuant to the Horse Racing Act. After deducting the amount of offset allowed pursuant to this section, any remaining daily capital outlay tax shall be paid by the commission to the taxation and revenue department from the retainage of a racetrack licensee from on-site wagers made on the licensed premises of the racetrack licensee for deposit in the general fund. Of the daily capital outlay tax imposed pursuant to this subsection:

- (1) for a class A racetrack licensee, not more than one-half of the daily capital outlay tax imposed on the first two hundred fifty thousand dollars (\$250,000) of the daily handle may be offset by the amount that the class A racetrack licensee expends for capital improvements or for long-term financing of capital improvements at the racetrack licensee's existing facility;

(2) for a class B racetrack licensee, not more than one-half of the daily capital outlay tax imposed on the first two hundred fifty thousand dollars (\$250,000) of the daily handle may be offset:

(a) in an amount not to exceed one-half of the offset allowed, the amount expended by the class B racetrack licensee for capital improvements; and

(b) in an amount not to exceed one-half of the offset allowed, the amount expended by the class B racetrack licensee for advertising, marketing and promoting horse racing in the state;

(3) through December 31, 2014, for both class A and class B racetrack licensees, an amount equal to one-half of the daily capital outlay tax is appropriated and transferred to the state fair commission for expenditure on capital improvements at the state fairgrounds and for expenditure on debt service on negotiable bonds issued for the state fairgrounds' capital improvements; and

(4) on and after January 1, 2015, for both class A and class B racetrack licensees, an amount equal to one-half of the daily capital outlay tax is appropriated and transferred to the racehorse testing fund.

B. An additional daily license fee of five hundred dollars (\$500) shall be paid to the commission by the racetrack licensee for each day of live racing on the premises of the racetrack licensee.

C. Accurate records shall be kept by the racetrack licensee to show gross amounts wagered, retainage, breakage and amounts received from interstate common pools and distributions from gross amounts wagered, retainage, breakage and amounts received from interstate common pools, as well as other information the commission may require. Records shall be open to inspection and shall be audited by the commission, its authorized representatives or an independent auditor selected by the commission. The commission may prescribe the method in which records shall be maintained. A racetrack licensee shall keep records that are accurate, legible and easy to understand.

D. Notwithstanding any other provision of law, a political subdivision of the state shall not impose an occupational tax on a horse racetrack owned or operated by a racetrack licensee. A political subdivision of the state shall not impose an excise tax on a horse racetrack owned or operated by a racetrack licensee. Local option gross receipts taxes authorized by the state may be imposed to the extent authorized and imposed by a subdivision of the state on a horse racetrack owned or operated by a racetrack licensee.

History: Laws 2007, ch. 39, § 20; 2011, ch. 75, § 1; 2013, ch. 102, § 3.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

The 2013 amendment, effective June 14, 2013, dedicated a portion of the daily capital outlay tax to test

racehorses; and in Paragraph (4) of Subsection A, after "appropriated and transferred to the", deleted "general" and added "racehorse testing".

The 2011 amendment, effective July 1, 2011, after December 31, 2014, transferred one-half of the daily capital outlay tax to the general fund.

60-1A-21. Inability to receive or administer distributions; New Mexico horse breeders' association; New Mexico horsemen's association; commission authority; New Mexico-bred horse registry. (Repealed effective July 1, 2028.)

A. In the event that money allocated to the New Mexico horse breeders' association pursuant to Section 60-1A-19 NMSA 1978 cannot be received or administered by the New Mexico horse breeders' association, the commission or another organization designated by the commission and under the absolute control of the commission shall receive and administer the money that is allocated to be distributed by the New Mexico horse breeders' association pursuant to Section 60-1A-24 NMSA 1978. If the commission or its designee organization is required to receive, administer and distribute money on behalf of the New Mexico horse breeders' association, the maximum percentage of retainage from Paragraph (3) of Subsection D of Section 60-1A-24 NMSA 1978 shall be distributed by the commission to the New Mexico horse breeders' association as a fee to certify the dam and stud of New Mexico-bred horses from the registry maintained by the New Mexico horse breeders' association.

B. In the event that money allocated to the New Mexico horsemen's association pursuant to the Horse Racing Act cannot be received or administered by the New Mexico horsemen's association,

the commission or another organization designated by the commission and under the absolute control of the commission shall receive and administer the money that is allocated by Section 60-1A-19 NMSA 1978 to the New Mexico horsemen's association and distribute the money as required by Section 60-1A-19 NMSA 1978.

History: Laws 2007, ch. 39, § 21.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

60-1A-22. Payment of taxes; payment of license fees. (Repealed effective July 1, 2028.)

A. Taxes imposed pursuant to the Horse Racing Act shall be remitted to the commission, and a notice of the remittance shall accompany the taxes paid by a racetrack licensee by the close of the business day on Thursday of every week. Failure to make weekly remittances by the racetrack licensee shall result in an assessment by the commission against the racetrack licensee in an amount equal to one percent of the amount that was due to be submitted.

B. Fees for licenses issued by the commission shall be paid to the commission. Daily license fees imposed by Section 60-1A-20 NMSA 1978 shall be submitted to the commission by the racetrack licensee by the close of the business day on Thursday of each week of on-track or simulcast racing.

C. Except for three thousand dollars (\$3,000) to be retained by the commission in the horse racing suspense fund, daily license fees and taxes shall be submitted by the commission to the taxation and revenue department on a date to be set by the taxation and revenue department that is no later than the twenty-fifth day of the month following the month in which the fees and taxes are received from a racetrack licensee.

History: Laws 2007, ch. 39, § 22.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

60-1A-23. Horse racing suspense account. (Repealed effective July 1, 2028.)

A. The "horse racing suspense account" is created in the state treasury to hold funds remitted to the commission for payment of all legal claims for refunds.

B. Money in the horse racing suspense account exceeding three thousand dollars (\$3,000) shall be transferred to the taxation and revenue department for deposit in the general fund.

C. The money in the horse racing suspense account shall be used to pay claims for refunds that have been determined by the commission to be legally due to the remitter.

History: Laws 2007, ch. 39, § 23.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

Cross references. — For the general fund, see 6-4-2 NMSA 1978.

60-1A-24. Breeders' awards. (Repealed effective July 1, 2028.)

A. The New Mexico horse breeders' association shall create a fund to pay horse breeders of New Mexico-bred horses merit and incentive awards.

B. A racetrack licensee shall pay into a fund created by the New Mexico horse breeders' association an amount equal to ten percent of the first money of a purse won, except for stakes-race purses, at a horse race in New Mexico by a horse registered with the New Mexico horse breeders' association as a New Mexico-bred horse. From stakes-race purses, a racetrack licensee shall pay into the fund created by the New Mexico horse breeders' association an amount equal to ten percent of the added money.

C. The money deposited with the New Mexico horse breeders' association by a racetrack licensee pursuant to Subsection B of this section shall be paid weekly to the breeder of record as recorded by the New Mexico horse breeders' association upon certification of the commission.

D. In addition to the money distributed pursuant to Subsection B of this section, the New Mexico horse breeders' association shall distribute the money allocated to the New Mexico horse breeders' association pursuant to Subsections B, C and D of Section 60-1A-19 NMSA 1978 in the following manner and pursuant to rules adopted by the commission:

- (1) forty-five percent of the money to the breeders of record as recorded by the New Mexico horse breeders' association of the first-, second- and third-place finishers;
- (2) seven percent of the money to the owners of the stallions that sired the first-place winners at the time the winners were conceived;
- (3) no more than eight percent of the money to be retained by the New Mexico horse breeders' association for the purpose of administering the distribution program set forth in this section; and
- (4) the remaining money to be divided among the owners of the first-, second- and third-place finishers during each race meet, provided that the first-, second- and third-place finishers are registered as New Mexico-bred horses with the New Mexico horse breeders' association and the owners are members of the association.

E. The commission shall establish by rule fiduciary, security and insurance safeguards for the money deposited with and paid out or distributed by the New Mexico horse breeders' association pursuant to the Horse Racing Act.

F. A check or other negotiable instrument representing a payment pursuant to Subsection D of this section that is not negotiated within one year from the date of issuance is no longer valid and negotiable. The money represented by the check or other negotiable instrument shall revert to the fund created pursuant to Subsection A of this section and the recipient shall no longer be eligible for the payment.

G. A person otherwise eligible for a payment pursuant to Subsection D of this section shall not be eligible if the person does not provide within ninety days of eligibility for a merit and incentive award information necessary for the New Mexico horse breeders' association to comply with state and federal tax law.

History: Laws 2007, ch. 39, § 24; 2019, ch. 142, § 1.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

The 2019 amendment, effective June 14, 2019, revised provisions related to paying merit and incentive rewards to breeders of New Mexico-bred horses; in Subsection C, after "weekly to the", deleted "owner of the dam of the horse at the time that the animal was foaled upon certification of the commission and the New Mexico horse breeders' association" and added "breeder of record as recorded by the New Mexico horse breeders' association upon certification of the commission"; in Subsection D, Paragraph D(1), after "money to the", deleted "owners

at the time the winners were foaled of the dams of the first-place winners" and added "breeders of record as recorded by the New Mexico horse breeders' association of the first-, second- and third-place finishers", in Paragraph D(2), after "money to the owners", deleted "at the time the winners were foaled of the studs that sired the first-place winners" and added "of the stallions that sired the first-place winners at the time the winners were conceived", and in Paragraph D(4), after "among", added "the owners of", and after "horse breeders' association", added "and the owners are members of the association"; and added Subsections E through G.

60-1A-25. Violations of horse racing act; fourth degree felony. (Repealed effective July 1, 2028.)

A person who willfully violates, attempts to violate or conspires to violate a requirement of the Horse Racing Act or a prohibition specifically set forth in the Horse Racing Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 2007, ch. 39, § 25.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

60-1A-26. Illegal use of pari-mutuel wagering. (Repealed effective July 1, 2028.)

A. A person shall not use pari-mutuel wagering except as permitted by the commission pursuant to the Horse Racing Act or pursuant to other state law providing licensing of persons to use pari-mutuel wagering.

B. A person who, directly or indirectly, uses pari-mutuel wagering in a manner that is not authorized by the commission or other state law is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

History: Laws 2007, ch. 39, § 26.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

claiming race against another participant were never intended to be settled by the track authorities under this section or any rule adopted pursuant thereto. *Grandi v. LeSage*, 1965-NMSC-017, 74 N.M. 799, 399 P.2d 285 (decided under former law).

ANNOTATIONS

Participants' fraud not covered. — Disputes involving losses through the fraud of one participant in a

60-1A-27. Predetermining horse races; influencing or attempting to influence; fourth degree felony. (Repealed effective July 1, 2028.)

A. A person shall not influence or attempt to influence the outcome of a horse race by offering money, a thing of value, a future benefit, a favor, preferred treatment or a form of pressure or threat.

B. A person shall not enter into an agreement with an owner, jockey, groom or any other person associated with or having an interest in a racehorse to predetermine the outcome of a horse race.

C. A person who influences or attempts to influence the outcome of a horse race or a person who enters into an agreement to predetermine the outcome of a horse race is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

History: Laws 2007, ch. 39, § 27.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

claiming race against another participant were never intended to be settled by the track authorities under this section or any rule adopted pursuant thereto. *Grandi v. LeSage*, 1965-NMSC-017, 74 N.M. 799, 399 P.2d 285 (decided under former law).

ANNOTATIONS

Participants' fraud not covered. — Disputes involving losses through the fraud of one participant in a

60-1A-28. Affecting speed or stamina of a race horse; penalties. (Repealed effective July 1, 2028.)

A. A person administering, attempting to administer or conspiring with others to administer to a racehorse a drug, chemical, stimulant or depressant or other performance-altering substance defined as a class 1 or class 2 penalty class A drug by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission whether internally, externally or by injection for the purpose of stimulating or depressing the racehorse or affecting the speed or stamina of the racehorse during a horse race or workout is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

B. A person who uses, attempts to use or conspires with others to use during a horse race or workout an electrically or mechanically prohibited device, implement or instrument, other than a commission-approved riding crop, is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

C. A person who sponges the nostrils or trachea of a racehorse or who uses anything to injure a racehorse for the purpose of stimulating or depressing the racehorse or affecting the speed or stamina of the racehorse during a horse race or workout is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

D. It is prima facie evidence of intent to commit any of the crimes set forth:

(1) in Subsection A of this section for a person to be found within the racing grounds of a racetrack licensee, including the stands, stables, sheds or other areas where racehorses are kept, who possesses with the intent to use, sell, give away or otherwise transfer to another person a drug, chemical, stimulant or depressant or other performance-altering substance defined as a class 1 or class 2 penalty class A drug by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission, to stimulate or depress a racehorse or to affect the speed or stamina of a racehorse;

(2) in Subsection B of this section for a person to be found within the racing grounds of a racetrack licensee, including the stands, stables, sheds or other areas where racehorses are kept, who possesses with the intent to use, sell, give away or otherwise transfer to another person an electrically or mechanically prohibited device, implement or instrument, other than a commission-approved riding crop; and

(3) in Subsection C of this section for a person to be found within the racing grounds of a racetrack licensee, including the stands, stables, sheds or other areas where racehorses are kept, who possesses with the intent to use, sell, give away or otherwise transfer to another person paraphernalia or substances used to sponge the nostrils or trachea of a racehorse or that may be used to injure a racehorse for the purpose of stimulating or depressing the racehorse or affecting its speed or stamina during a horse race or workout.

History: Laws 2007, ch. 39, § 28; 2013, ch. 103, § 4.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

The 2013 amendment, effective June 14, 2013, provided a nationally recognized classification of prohibited substances; in Subsection A, added the language between "depressant or other" and "whether internally, externally or by injection"; in Subsection B, after "implement or instrument, other than", deleted "an ordinary whip" and added "a commission-approved riding crop"; in Paragraph (1) of Subsection D, after "depressant or other", deleted "foreign substance not naturally occurring in a racehorse" added between "depressant or other" and "to stimulate or

depress a racehorse"; and in Paragraph (2) of Subsection D, after "instrument, other than", deleted "an ordinary whip" and added "a commission-approved riding crop".

ANNOTATIONS

Participants' fraud not covered. — Disputes involving losses through the fraud of one participant in a claiming race against another participant were never intended to be settled by the track authorities under this section or any rule adopted pursuant thereto. *Grandi v. LeSage*, 1965-NMSC-017, 74 N.M. 799, 399 P.2d 285 (decided under former law).

60-1A-28.1. Racetrack licensees; power to eject or exclude. (Repealed effective July 1, 2028.)

A. A racetrack licensee may eject or exclude from the association grounds any person whose occupational license has been suspended or revoked by the commission for administering a performance-altering substance as provided in Subsection A of Section 60-1A-28 NMSA 1978.

B. Nothing in this section shall be construed to limit a racetrack licensee's power to eject or exclude a person from the association grounds for any other lawful reason.

C. For the purposes of this section, "association grounds" means all real property used during a race meeting by a person holding a license from the commission to conduct racing with pari-mutuel wagering, including the racetrack, grandstand, casino, concession stands, offices, barns, stable area, employee housing facilities and parking lots.

History: Laws 2014, ch. 6, § 1.

Emergency clauses. — Laws 2014, ch. 6, § 2 contained an emergency clause and was approved March 3, 2014.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

ANNOTATIONS

Statute, authorizing racetrack licensees to exclude any person from its racetrack, enacted after case filed cannot be applied to pending case. — Where plaintiff, a racehorse owner and trainer, filed a

complaint in 2013 against several private racetracks for excluding plaintiff from entering the racetracks and the races held at the racetracks, alleging that his rights as a licensee were violated, 60-1A-28.1 NMSA 1978, which was enacted in 2014 and gives racetrack licensees the power to exclude any person from its racetrack for any lawful reason, could not be applied to plaintiff's pending case, because statutes are presumed to operate prospectively only and will not be given a retroactive effect unless such intention on the part of the legislature is clearly apparent. *Carrillo v. My Way Holdings, LLC*, 2017-NMCA-024.

Limitations on common law right to exclude. — A privately owned racetrack possesses a common law right to exclude individuals, both patrons and licensees, from its racetracks, but the exclusion must be for a lawful reason and may not be based on race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap. *Carrillo v. My Way Holdings, LLC*, 2017-NMCA-024.

Privately owned racetracks have a common law right to exclude any person, patron or licensee, from races held at their racetracks. — Where plaintiff, a racehorse owner and trainer, filed a complaint

against several private racetracks for excluding plaintiff from entering the racetracks and the races held at the racetracks based on incidents that had occurred involving the death and injury of plaintiff's horses at certain racetracks, the district court did not err in granting summary judgment in favor of the racetracks because under the common law, a privately owned racetrack possesses a right to exclude any person for any lawful reason, and plaintiff did not meet his burden of proving that exclusion was not a reasonable discretionary business judgment. *Carrillo v. My Way Holdings, LLC*, 2017-NMCA-024.

60-1A-29. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The state racing commission is terminated on July 1, 2027 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The commission shall continue to operate according to the provisions of Chapter 60, Article 1A NMSA 1978 until July 1, 2028. Effective July 1, 2028, Chapter 60, Article 1A NMSA 1978 is repealed.

History: Laws 2007, ch. 39, § 29; 2011, ch. 75, § 2; 2018, ch. 31, § 1; 2022, ch. 31, § 1.

The 2022 amendment, effective May 18, 2022, changed "July 1, 2021" to "July 1, 2027", and changed "July 1, 2022" to "July 1, 2028".

The 2018 amendment, effective May 16, 2018, extended the termination date of the state racing

commission; after the first occurrence of "July 1", deleted "2017" and added "2021", and after each of the next two occurrences of "July 1", deleted "2018" and added "2022".

The 2011 amendment, effective July 1, 2011, extended the sunset date from July 1, 2012 to July 1, 2018.

60-1A-30. Temporary provisions [Terms continued]. (Repealed effective July 1, 2028.)

A. Members of the state racing commission who are on the commission on June 30, 2007 shall remain on the state racing commission and complete the terms to which they were appointed, or if the member's term expires on June 30, 2007, until a replacement is appointed.

B. All personnel, records, equipment, supplies and other property of the state racing commission on June 30, 2007 shall remain the personnel, records, equipment, supplies and property of the state racing commission created in this 2007 act.

C. Appropriations to and money held by or for the state racing commission that does not revert to the general fund or another fund on June 30, 2007 shall continue on July 1, 2007 to be held by or for the state racing commission created in this 2007 act.

History: Laws 2007, ch. 39, § 33.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Delayed repeals. — For delayed repeal of this section, see 60-1A-29 NMSA 1978.

ARTICLE 2

Boxing and Wrestling Matches

(Repealed by Laws 1980, ch. 90, § 32.)

60-2-1 to 60-2-5. Repealed.

Repeals. — Laws 1980, ch. 90, § 32, repealed 60-2-1 to 60-2-5 NMSA 1978, relating to boxing and wrestling matches, effective July 1, 1980. For present provisions

relating to professional athletic competition, see Chapter 60, Article 2A NMSA 1978.

ARTICLE 2A

Athletic Competition

Sec.

- 60-2A-1. Short title. (Repealed effective July 1, 2024.)
- 60-2A-2. Definitions. (Repealed effective July 1, 2024.)
- 60-2A-3. Commission created; terms; restrictions. (Repealed effective July 1, 2024.)
- 60-2A-4. Chairman; rules. (Repealed effective July 1, 2024.)
- 60-2A-5. Repealed.
- 60-2A-6. Per diem and mileage. (Repealed effective July 1, 2024.)
- 60-2A-7. Medical advisory board. (Repealed effective July 1, 2024.)
- 60-2A-8. Jurisdiction of commission over professional contests. (Repealed effective July 1, 2024.)
- 60-2A-8.1. Cooperative agreements with tribal governments. (Repealed effective July 1, 2024.)
- 60-2A-8.2. Jurisdiction of commission over unarmed combat contests. (Repealed effective July 1, 2024.)
- 60-2A-9. Licenses to conduct professional contests. (Repealed effective July 1, 2024.)
- 60-2A-10. Licenses for promoters, boxers, wrestlers, trainers, ring officials and others. (Repealed effective July 1, 2024.)
- 60-2A-11. Licenses for physicians. (Repealed effective July 1, 2024.)
- 60-2A-12. License fees. (Repealed effective July 1, 2024.)
- 60-2A-13. Real party in interest. (Repealed effective July 1, 2024.)
- 60-2A-14. Suspension; revocation of licenses. (Repealed effective July 1, 2024.)
- 60-2A-15. Subpoena power. (Repealed effective July 1, 2024.)
- 60-2A-16. Contracts. (Repealed effective July 1, 2024.)
- 60-2A-17. Insurance. (Repealed effective July 1, 2024.)
- 60-2A-18. Advances against contestant's purse. (Repealed effective July 1, 2024.)

Sec.

- 60-2A-19. Withholding of purse. (Repealed effective July 1, 2024.)
- 60-2A-20. Attendance at weigh-ins; medical examinations; professional contests. (Repealed effective July 1, 2024.)
- 60-2A-21. Length of professional contests; rounds. (Repealed effective July 1, 2024.)
- 60-2A-22. Minors; participants. (Repealed effective July 1, 2024.)
- 60-2A-23. Regulatory fees on promotions. (Repealed effective July 1, 2024.)
- 60-2A-24. Athletic commission fund. (Repealed effective July 1, 2024.)
- 60-2A-25. Time of payment of regulatory fee. (Repealed effective July 1, 2024.)
- 60-2A-26. Supervisory fee on closed-circuit telecasts or motion pictures; report to commission. (Repealed effective July 1, 2024.)
- 60-2A-27. Penalty; nonpayment of fee. (Repealed effective July 1, 2024.)
- 60-2A-28. Civil penalty. (Repealed effective July 1, 2024.)
- 60-2A-29. Penalty. (Repealed effective July 1, 2024.)
- 60-2A-30. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)
- 60-2A-31. Boxing headgear required when under fifteen years of age; penalty. (Repealed effective July 1, 2024.)
- 60-2A-32. Protective headgear required in all amateur boxing. (Repealed effective July 1, 2024.)
- 60-2A-33. Criminal offender character evaluation. (Repealed effective July 1, 2024.)
- 60-2A-34. Unlicensed activity; disciplinary proceedings; civil penalty. (Repealed effective July 1, 2024.)

60-2A-1. Short title. (Repealed effective July 1, 2024.)

Chapter 60, Article 2A NMSA 1978 may be cited as the "Professional Athletic Competition Act".

History: Laws 1980, ch. 90, § 1; 2000, ch. 4, § 6.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

The 2000 amendment, effective February 15, 2000, substituted "Chapter 60, Article 2A NMSA 1978" for "This act".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 27A Am. Jur. 2d Entertainment and Sports Law § 39 et seq. 30A C.J.S. Entertainment and Amusement §§ 8, 9.

60-2A-2. Definitions. (Repealed effective July 1, 2024.)

As used in the Professional Athletic Competition Act:

- A. "board" means the medical advisory board;
- B. "commission" means the New Mexico athletic commission;
- C. "contestant" means a person who engages in unarmed combat for remuneration;
- D. "department" means the regulation and licensing department;
- E. "foreign co-promoter" means a promoter who has no place of business in this state;
- F. "manager":
 - (1) means a person who:

(a) undertakes to represent the interests of another person by contract, agreement or other arrangement in procuring, arranging or conducting a professional contest or exhibition in which the represented person will participate as a contestant;

(b) directs or controls the activities of an unarmed combatant relating to the participation of the unarmed combatant in professional contests or exhibitions;

(c) receives or is entitled to receive at least ten percent of the gross purse or gross income of any professional unarmed combatant for services relating to the participation of the unarmed combatant in a professional contest or exhibition; or

(d) receives compensation for services as an agent or representative of an unarmed combatant; and

(2) does not include an attorney who is licensed to practice law in this state if the attorney's participation in any of the activities described in Paragraph (1) of this subsection is limited solely to the legal representation of a client who is an unarmed combatant;

G. "professional boxer" or "professional wrestler" means an individual who competes for money, prizes or purses or who teaches, pursues or assists in the practice of boxing, wrestling or martial arts as a means of obtaining a livelihood or pecuniary gain;

H. "professional contest" means any professional boxing, wrestling or martial arts contest or exhibition, whether or not an admission fee is charged for admission of the public;

I. "promoter" means any person, and in the case of a corporate promoter includes any officer, director or stockholder of the corporation, who produces or stages any professional boxing, wrestling or martial arts contest, exhibition or closed circuit television show;

J. "purse" means the financial guarantee or any other remuneration, or part thereof, for which professional boxers or professional wrestlers are participating in a contest or exhibition and includes the participant's share of any payment received for radio broadcasting, television or motion picture rights;

K. "ring official" means any person who performs an official function during the progress of a contest or exhibition;

L. "unarmed combat" means boxing, wrestling, martial arts or any form of competition in which a blow is usually struck that may reasonably be expected to inflict injury; and

M. "unarmed combatant" means:

(1) a person who engages in unarmed combat in a contest or exhibition, whether or not the person receives remuneration, including a wrestler, boxer, mixed martial artist or other contestant; or

(2) an amateur boxer who is registered with United States amateur boxing, incorporated, or any other amateur organization recognized by the commission and participates in an amateur boxing contest or exhibition in the state that is registered and sanctioned by United States amateur boxing, incorporated or golden gloves of America.

History: Laws 1980, ch. 90, § 2; 1981, ch. 326, § 1; 1991, ch. 218, § 1; 2007, ch. 109, § 1.

Delayed repeals. — For delayed repeal of this section, see 60-2A-30 NMSA 1978

The 2007 amendment, effective March 30, 2007, defined "contestant", "manager", "unarmed combat" and "unarmed combatant".

The 1991 amendment, effective June 14, 1991, added Subsection I and made related changes and minor stylistic changes in Subsections F and G.

ANNOTATIONS

"Closed circuit television show". — Cable television is a type of closed circuit television show within the meaning of Subsection F (now I) and this article. 1988 Op. Att'y Gen. No. 88-51.

60-2A-3. Commission created; terms; restrictions. (Repealed effective July 1, 2024.)

A. There is created the "New Mexico athletic commission". The commission shall be administratively attached to the department.

B. The commission shall consist of five members who are New Mexico residents and who are appointed by the governor. Three of the members shall have experience in the professional sports,

and the other two members shall represent the public. The public members shall not have been licensed or have any financial interest, direct or indirect, in the profession regulated. The members shall be appointed for staggered terms of four years each. Each member shall hold office until the expiration of the term for which appointed or until a successor has been appointed. Not more than three members of the commission shall be appointed from the same political party. No commission member shall serve more than two full terms consecutively.

C. No member shall at any time during his membership on the commission promote or sponsor any professional contest or have any financial interest in the promotion or sponsorship of any professional contest.

History: Laws 1980, ch. 90, § 3; 1991, ch. 218, § 2.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

The 1991 amendment, effective June 14, 1991, rewrote Subsection A to delete provisions relating to initial appointments of members, terms and vacancies and to add the present second sentence; rewrote

Subsection B, which read "Not more than two members of the commission shall be appointed from the same political party"; deleted former Subsection C, which read "Two members of the commission shall constitute a quorum for the exercise of the powers and duties of the commission"; and redesignated former Subsection D as present Subsection C.

60-2A-4. Chairman; rules. (Repealed effective July 1, 2024.)

A. The commission shall elect annually in December a chairman and such other officers as it deems necessary. The commission shall meet as often as necessary for the conduct of business, but no less than twice a year. Meetings shall be called by the chairman or upon the written request of three or more members of the commission. Three members, at least one of whom is a public member, shall constitute a quorum.

B. The commission may adopt, purchase and use a seal.

C. The commission may adopt rules, subject to the provisions of the State Rules Act [14-4-1 NMSA 1978], for the administration of the Professional Athletic Competition Act not inconsistent with the provisions of the Professional Athletic Competition Act. The rules shall include but not be limited to the:

- (1) number and qualifications of ring officials required in a professional contest;
- (2) powers, duties and compensation of ring officials; and
- (3) qualifications of licensees.

D. The commission shall prepare all forms of contracts between sponsors, licensees, promoters and contestants.

History: Laws 1980, ch. 90, § 4; 1991, ch. 218, § 3.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

The 1991 amendment, effective June 14, 1991, rewrote Subsection A, which read "The members of the commission shall elect one of their number as chairman", and made a minor stylistic change in Subsection C.

60-2A-5. Repealed.

Repeals. — Laws 2003, ch. 408, § 35 repealed 60-2A-5, as enacted by Laws 1980, ch. 90, § 5, relating to the executive secretary, effective July 1, 2003. For provisions

of former section, see the 2002 NMSA 1978 on *NMOne Source.com*.

60-2A-6. Per diem and mileage. (Repealed effective July 1, 2024.)

The commission members shall be entitled to per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

History: Laws 1980, ch. 90, § 6.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-7. Medical advisory board. (Repealed effective July 1, 2024.)

A. There is created the "medical advisory board" to assist the commission.

B. The board shall consist of three members to be appointed by the commission. Each member of the board shall be licensed to practice medicine in this state and shall have had at the time of his appointment at least five years' experience in the practice of his profession. Members of the board shall serve without compensation. The board shall:

(1) prepare and submit to the commission for its approval standards for the physical and mental examination of professional boxers and professional wrestlers which shall safeguard their health; provided, no standard shall become effective until approved by the commission;

(2) recommend to the commission for licensing purposes physicians who are qualified to make examinations of professional boxers and wrestlers; and

(3) upon request of the commission, advise the commission as to the physical and mental fitness of any individual professional boxer or wrestler.

History: Laws 1980, ch. 90, § 7.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-8. Jurisdiction of commission over professional contests. (Repealed effective July 1, 2024.)

The commission shall have sole direction, management, control and jurisdiction over all professional contests to be conducted, held or given within New Mexico, and no professional contest shall be conducted, held or given in this state except in accordance with the provisions of the Professional Athletic Competition Act.

History: Laws 1980, ch. 90, § 8.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-8.1. Cooperative agreements with tribal governments. (Repealed effective July 1, 2024.)

A. The commission may enter into a cooperative agreement with an Indian nation, tribe or pueblo whose tribal lands lie wholly or partly in New Mexico for the exchange of information and for the reciprocal, joint or common direction, management or control of professional contests conducted, held or given in New Mexico. To be effective, an agreement must be signed by the governor.

B. Money collected by the commission on behalf of an Indian nation, tribe or pueblo in accordance with an agreement entered into pursuant to this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or by the Indian nation, tribe or pueblo that the fees of one have precedence over the fees of the other when the person, event or transaction is subject to the jurisdiction of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any other Indian nation, tribe or pueblo.

History: Laws 2005, ch. 346, § 7.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

Effective dates. — Laws 2005, ch. 346 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

60-2A-8.2. Jurisdiction of commission over unarmed combat contests. (Repealed effective July 1, 2024.)

A. The commission shall have sole direction, management, control and jurisdiction over all contests or exhibitions of unarmed combat to be conducted, held or given within New Mexico, and no contest or exhibition may be conducted, held or given within the state except in accordance with the provisions of the Professional Athletic Competition Act.

B. Any contest involving a form of Oriental unarmed self-defense must be conducted pursuant to rules for that form that are approved by the commission before the contest is conducted, held or given in the state except in accordance with the provisions of the Professional Athletic Competition Act.

History: Laws 2007, ch. 109, § 2.
Delayed repeal. — For delayed repeal of this section,
 see 60-2A-30 NMSA 1978

Emergency clause. — Laws 2007, ch. 109, § 3 contained an emergency clause and was approved March 30, 2007.

60-2A-9. Licenses to conduct professional contests. (Repealed effective July 1, 2024.)

A. The commission may issue licenses to conduct, hold or give a professional contest to any promoter under such terms and in accordance with such rules as the commission may adopt.

B. Any application for such a license shall be in writing and shall correctly show the promoter. The application shall be accompanied by the annual fee prescribed by law.

C. Before any license is granted to a promoter, the promoter must file a bond in an amount fixed by the commission but not less than two thousand dollars (\$2,000) with good and sufficient surety and conditioned for the faithful performance by the promoter of the provisions of the Professional Athletic Competition Act.

History: Laws 1980, ch. 90, § 9.
Delayed repeal. — For delayed repeal of this section,
 see 60-2A-30 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

60-2A-10. Licenses for promoters, boxers, wrestlers, trainers, ring officials and others. (Repealed effective July 1, 2024.)

A. All promoters, foreign co-promoters, matchmakers, professional boxers, professional wrestlers, managers, seconds, announcers, referees, trainers, booking agents and timekeepers shall be licensed by the commission.

B. No person shall be permitted to participate, either directly or indirectly, in any professional contest unless such person shall have first procured a license from the commission.

C. Any person violating the provisions of this section is guilty of a petty misdemeanor.

History: Laws 1980, ch. 90, § 10.

Delayed repeal. — For delayed repeal of this section,
 see 60-2A-30 NMSA 1978.

60-2A-11. Licenses for physicians. (Repealed effective July 1, 2024.)

The commission may issue licenses without fees to physicians authorizing them to officiate at professional contests.

History: Laws 1980, ch. 90, § 11.

Delayed repeal. — For delayed repeal of this section,
 see 60-2A-30 NMSA 1978.

60-2A-12. License fees. (Repealed effective July 1, 2024.)

The annual license fee shall not exceed the following amounts:

A. promoters	\$300.00
B. foreign co-promoters	500.00
C. referees	40.00
D. timekeepers and announcers	25.00
E. seconds and trainers	25.00
F. managers	50.00
G. professional boxers	25.00
H. professional wrestlers	25.00
I. booking agents	50.00
J. matchmakers	50.00
K. judges	25.00

Every license shall expire at midnight on December 31 of the year in which the license is issued.

History: Laws 1980, ch. 90, § 12; 1991, ch. 218, § 4.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "shall not exceed the following amounts" for "shall be" in the introductory phrase; inserted "professional" in Subsections G and H; inserted Subsection K;

and increased the fees as follows: in Subsection A, from \$200.00 to \$300.00, in Subsection B, from \$400.00 to \$500.00, in Subsection C, from \$10.00 to \$40.00, in Subsection D, from \$1.00 to \$25.00, in Subsection E, from \$5.00 to \$25.00, in Subsection F, from \$25.00 to \$50.00, in Subsection G, from \$5.00 to \$25.00 and, in Subsection J, from \$25.00 to \$50.00.

60-2A-13. Real party in interest. (Repealed effective July 1, 2024.)

The commission shall not issue any license for a professional contest unless it is satisfied that the promoter is the real party in interest and intends to conduct, hold or give such contests himself, or unless the promoter receives at least twenty-five percent of the net receipts. A license may be revoked at any time if the commission finds that the promoter is not the real party in interest.

History: Laws 1980, ch. 90, § 13.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-14. Suspension; revocation of licenses. (Repealed effective July 1, 2024.)

- A. The commission may suspend or revoke any license when in its judgment the licensee:
- (1) participated in any sham or fake professional contest;
 - (2) is guilty of a failure to give his best efforts in a professional contest;
 - (3) is guilty of any foul or unsportsmanlike conduct in connection with a professional contest; or
 - (4) is guilty of participating in an event while under the influence of illegal drugs.

B. Before revocation of a license, the commission shall afford the licensee opportunity for a hearing, and upon request of the licensee and after reasonable notice, the commission shall conduct a hearing on the revocation, permitting the licensee to appear personally and by counsel, introduce evidence and examine and cross-examine witnesses.

C. A majority vote of the members of the commission is required to revoke a license. The commission shall file a written report of its findings, determinations and order with the record of the proceedings and shall send a copy thereof to the licensee.

History: Laws 1980, ch. 90, § 14; 1983, ch. 37, § 1; 1991, ch. 218, § 5.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

The 1991 amendment, effective June 14, 1991, added Paragraph (4) in Subsection A and made a related stylistic change.

60-2A-15. Subpoena power. (Repealed effective July 1, 2024.)

The commission, on a vote of the majority of the members thereof, may issue subpoenas in connection with any investigation or hearing, requiring the attendance and testimony of any person or the production of books and papers of any licensee or other person whom the commission believes to have information, books or papers of importance to the investigation or hearing.

History: Laws 1980, ch. 90, § 15.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-16. Contracts. (Repealed effective July 1, 2024.)

A. Every professional boxer or professional wrestler competing in a professional contest shall be entitled to receive a copy of a written contract or agreement approved as to form by the commission binding a licensee to pay the professional boxer or professional wrestler a certain fixed fee or percentage of the gate receipts.

B. One copy of such contract or agreement shall be filed with the executive secretary of the commission and one copy shall be retained by the licensee or promoter of the professional contest.

History: Laws 1980, ch. 90, § 16.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-17. Insurance. (Repealed effective July 1, 2024.)

A. The commission may by rule require insurance coverage for each licensed professional boxer or professional wrestler to provide for medical, surgical and hospital care for injuries sustained while preparing for or engaged in a professional contest in an amount of one thousand dollars (\$1,000) payable to such boxer or wrestler as beneficiary.

B. In lieu of, or in addition to, the insurance provided for in Subsection A of this section, the commission may establish a voluntary injury fund in the state treasury to provide for the medical care of a professional boxer or professional wrestler injured in the course of a professional contest. The fund shall consist solely of voluntary contributions by promoters equal to two percent of the gross receipts of the professional contest. The funds may be expended upon vouchers signed by the chairman of the commission and warrants drawn by the secretary of finance and administration.

History: Laws 1980, ch. 90, § 17.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-18. Advances against contestant's purse. (Repealed effective July 1, 2024.)

No promoter or foreign co-promoter shall pay or give any money to a licensee before any professional contest as an advance against a contestant's purse or for a similar purpose, except that a promoter may, with the prior written consent of the commission, pay or advance to a contestant necessary expenses for transportation and maintenance in preparation for a professional contest.

History: Laws 1980, ch. 90, § 18.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-19. Withholding of purse. (Repealed effective July 1, 2024.)

A. The commission or its executive secretary may order a promoter to withhold any part of a purse or other funds belonging or payable to any contestant, manager or second if, in the judgment

of the commission or the executive secretary, the contestant is not competing honestly or to the best of his skill and ability or if the manager or second has violated any of the provisions of the Professional Athletic Competition Act or any rule promulgated thereunder.

B. This section does not apply to any professional wrestler who appears not to be competing honestly or to the best of his skill and ability.

C. Upon the withholding of any part of a purse pursuant to this section, the commission shall immediately schedule a hearing on the matter as promptly as possible. If it is determined that such contestant, manager or second is not entitled to any part of his share of the purse or other funds, the promoter shall turn such money over to the commission and it shall become forfeit to the state and be disposed of as are fees.

History: Laws 1980, ch. 90, § 19.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-20. Attendance at weigh-ins; medical examinations; professional contests. (Repealed effective July 1, 2024.)

A. The executive secretary or a member of the commission shall be present at all weigh-ins, medical examinations and professional contests and shall see that the provisions of the Professional Athletic Competition Act and the rules made pursuant thereto are strictly enforced.

B. Every participant in a professional boxing contest shall be present and weighed in no later than twelve o'clock noon on the day of the professional contest.

History: Laws 1980, ch. 90, § 20.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-21. Length of professional contests; rounds. (Repealed effective July 1, 2024.)

No professional boxing contest shall be more than fifteen rounds in length, and each round shall not exceed three minutes in length. There shall be a one-minute rest between rounds. The commission shall adopt rules governing the length of professional wrestling contests, duration of rounds and the period of rest between rounds.

History: Laws 1980, ch. 90, § 21.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-22. Minors; participants. (Repealed effective July 1, 2024.)

No person under the age of majority shall participate in or be licensed for any professional contest.

History: Laws 1980, ch. 90, § 22.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-23. Regulatory fees on promotions. (Repealed effective July 1, 2024.)

A. In addition to any other taxes or fees provided by law, there is imposed upon every promoter for the privilege of promoting a professional contest a regulatory fee in an amount determined pursuant to the rules of the commission to be sufficient to cover the costs of regulating the contest; provided that the fee shall not exceed four percent of the total gross receipts of any professional contest conducted live in New Mexico.

B. The commission shall adopt rules for the administration, collection and enforcement of the fee imposed pursuant to this section.

C. As used in this section, "total gross receipts of any professional contest" includes:

- (1) the gross price charged for the sale, lease or other exploitation of broadcasting, television or motion picture rights of the professional contest without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- (2) the face value of all tickets sold and complimentary tickets issued; and
- (3) any sums received as consideration for holding a professional contest at a particular location.

History: Laws 1980, ch. 90, § 23; 1981, ch. 326, § 2; 2005, ch. 346, § 1.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, in Subsection A, provided for the imposition of a regulatory

fee in an amount determined pursuant to the rules of the commission to be sufficient to cover the costs of regulating the contest provided that the fee shall not exceed four percent.

60-2A-24. Athletic commission fund. (Repealed effective July 1, 2024.)

The proceeds of the regulatory fee on promotions and of the supervisory fee on closed-circuit television or motion pictures, together with any license fees or other fees authorized pursuant to the Professional Athletic Competition Act, shall be deposited with the state treasurer to the credit of the "athletic commission fund" which is hereby created. Money in the fund is subject to appropriation by the legislature. Expenditures from the athletic commission fund shall only be made on vouchers issued and signed by the person designated by the commission upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department of finance and administration.

History: Laws 1980, ch. 90, § 24; 2005, ch. 346, § 2.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed "privilege tax" to "regulatory fee" and provided that money in the fund is subject to appropriation by the legislature.

60-2A-25. Time of payment of regulatory fee. (Repealed effective July 1, 2024.)

A. Any person upon whom the regulatory fee is imposed pursuant to Section 60-2A-23 NMSA 1978 shall, within seventy-two hours after the completion of any professional contest for which an admission fee is charged and received or a contribution is requested and received, furnish to the commission a written report on forms prescribed by the commission showing:

- (1) the number of tickets sold and issued or sold or issued for the professional contest;
- (2) the amount of the gross receipts or value thereof;
- (3) the amount of gross receipts derived from the sale, lease or other exploitation of broadcasting, motion picture or television rights of the professional contest, without any deductions for commissions, brokerage fees, distribution fees, advertising or any other expenses or charges; and
- (4) such other matters as the commission may prescribe.

B. The commission or any of its authorized employees may inspect the books, ticket stubs or any other data necessary for the proper enforcement of the regulatory fee and supervisory fee imposed pursuant to the Professional Athletic Competition Act.

History: Laws 1980, ch. 90, § 25; 2005, ch. 346, § 3.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed "privilege tax" to "regulatory fee" in Subsection

A; and changed "privilege tax" to "regulatory fee and supervisory fee" in Subsection B.

60-2A-26. Supervisory fee on closed-circuit telecasts or motion pictures; report to commission. (Repealed effective July 1, 2024.)

A. Any person who charges and receives an admission fee for exhibiting any live professional contest on a closed-circuit telecast or motion picture shall, within seventy-two hours after the event, furnish to the commission a verified written report on a form prescribed by the commission showing the number of tickets sold and issued or sold or issued and the gross receipts for the exhibition without any deductions.

B. There is imposed a supervisory fee upon the privilege of exhibiting for an admission fee any live professional contest on a closed-circuit telecast or motion picture. A supervisory fee is imposed in an amount determined pursuant to the rules of the commission to be sufficient to cover the costs of supervising the exhibition; provided that the fee shall not exceed five percent of the gross receipts derived from the exhibition.

C. The fee imposed pursuant to this section shall be administered, collected, enforced and the proceeds deposited as provided in Section 60-2A-24 NMSA 1978.

History: Laws 1980, ch. 90, § 26; 1981, ch. 326, § 3; 1997, ch. 174, § 1; 2005, ch. 346, § 4.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, in Subsection B, changed "tax" to "supervisory fee"; deleted the former provision which provided that a fee was imposed on a live professional contest except a live professional boxing contest held between the effective date of the 1977 act and July 1, 1999; and provided that a supervisory fee is imposed in an amount determined by rule of the commission to be sufficient to cover the costs of

supervising the exhibition, provided the fees shall not exceed five percent; and in Subsection C, changed "privilege tax" to "fee".

The 1997 amendment, effective April 9, 1997, inserted the exception in the first sentence in Subsection B, and made stylistic changes.

ANNOTATIONS

"Closed-circuit telecast". — Cable television is a type of closed-circuit telecast within the meaning of this section. 1988 Op. Att'y Gen. No. 88-51.

60-2A-27. Penalty; nonpayment of fee. (Repealed effective July 1, 2024.)

Any person who willfully attempts to evade or defeat any regulatory fee or supervisory fee or the payment thereof imposed pursuant to the Professional Athletic Competition Act is guilty of a fourth degree felony.

History: Laws 1980, ch. 90, § 27; 2005, ch. 346, § 5.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed "tax" to "regulatory fee and supervisory fee".

60-2A-28. Civil penalty. (Repealed effective July 1, 2024.)

In the case of failure due to negligence or disregard of rules and regulations of the commission, but without intent to defraud, to pay when due any amount of regulatory fee or supervisory fee required to be paid pursuant to the Professional Athletic Competition Act, there shall be added to the amount two percent per month or a fraction of a month from the date the fee was due or from the date the report was required to be filed, not to exceed ten percent of the fee due.

History: Laws 1980, ch. 90, § 28; 2005, ch. 346, § 6.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed "tax" to "regulatory fee and supervisory fee".

60-2A-29. Penalty. (Repealed effective July 1, 2024.)

Any person violating the provisions of the Professional Athletic Competition Act is guilty of a misdemeanor and upon conviction therefor shall be punished, in the discretion of the court, by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed three months, or by both such fine and imprisonment.

History: Laws 1980, ch. 90, § 29.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-30. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The New Mexico athletic commission is terminated on July 1, 2023 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The commission shall continue to operate according to the provisions of the Professional Athletic Competition Act until July 1, 2024. Effective July 1, 2024, Chapter 60, Article 2A NMSA 1978 is repealed.

History: Laws 1980, ch. 90, § 30; 1981, ch. 241, § 14; 1983, ch. 37, § 2; 1987, ch. 333, § 4; 1993, ch. 83, § 3; 2000, ch. 4, § 7; 2005, ch. 208, § 4; 2011, ch. 30, § 1; 2017, ch. 52, § 2.

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024".

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 2000 amendment, effective February 15, 2000, substituted "2005" for "1999" in the first sentence; "the Professional Athletic Competition Act" for "Chapter 60, Article 2A NMSA 1978" in the second sentence and "2006" for "2000" in the last two sentences.

The 1993 amendment, effective June 18, 1993, substituted "July 1, 1999" for "July 1, 1993" in the first sentence, and "July 1, 2000" for "July 1, 1994" in the second and third sentences.

60-2A-31. Boxing headgear required when under fifteen years of age; penalty. (Repealed effective July 1, 2024.)

A. It is unlawful for any person to permit, promote or sponsor any person under the age of fifteen years to train as a boxer, engage in boxing matches or compete in school boxing exhibitions or events without wearing protective headgear.

B. Any person violating the provisions of Subsection A of this section is guilty of a petty misdemeanor.

History: Laws 1981, ch. 327, § 1.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-32. Protective headgear required in all amateur boxing. (Repealed effective July 1, 2024.)

A. It is unlawful for any person to permit, sponsor or promote any amateur to train as a boxer, engage in boxing matches or compete in boxing events without wearing protective headgear meeting the standards approved under the official rules of the USA Amateur Boxing Federation.

B. Any person violating the provisions of Subsection A of this section is guilty of a misdemeanor.

History: Laws 1983, ch. 146, § 1.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-33. Criminal offender character evaluation. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Professional Athletic Competition Act.

History: 1978 Comp., § 60-2A-33, enacted by Laws 1991, ch. 218, § 6.

Delayed repeal. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

60-2A-34. Unlicensed activity; disciplinary proceedings; civil penalty. (Repealed effective July 1, 2024.)

A person who is not licensed to engage in a professional athletic competition activity regulated by the board is subject to disciplinary proceedings by the board as provided in the Uniform Licensing Act [Sections 61-1-1 through 61-1-31 NMSA 1978]. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty in an amount not to exceed two thousand dollars (\$2,000) against a person who engages in a professional athletic competition activity regulated by the board without a license. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing.

History: Laws 2017, ch. 52, § 1.

Delayed repeals. — For delayed repeal of this section, see 60-2A-30 NMSA 1978.

Effective dates. — Laws 2017, ch. 52 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

ARTICLE 2B

Bingo and Raffle

Sec.

60-2B-1. Repealed.
60-2B-2. Repealed.
60-2B-3. Repealed.
60-2B-4. Repealed.
60-2B-5. Repealed.
60-2B-6. Repealed.
60-2B-7. Repealed.
60-2B-8. Repealed.

Sec.

60-2B-9. Repealed.
60-2B-9.1. Repealed.
60-2B-10. Repealed.
60-2B-11. Repealed.
60-2B-12. Repealed.
60-2B-13. Repealed.
60-2B-14. Repealed.

60-2B-1. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-1 NMSA 1978, as enacted by Laws 1981, ch. 259, § 1, relating to the short title of the Bingo and Raffle Act, effective

July 1, 2009. For provisions of former section, see the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-2. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-2 NMSA 1978, as enacted by Laws 1981, ch. 259, § 2, relating to purpose of the act, effective July 1, 2009. For

provisions of former section, see the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-3. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-3 NMSA 1978, as enacted by Laws 1981, ch. 259, § 3, relating to definitions, effective July 1, 2009. For provisions

of former section, see the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-4. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-4 NMSA 1978, as enacted by Laws 1981, ch. 259, § 4, relating to the licensing authority, effective July 1, 2009. For

provisions of former section, see the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-5. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-5 NMSA 1978, as enacted by Laws 1981, ch. 259, § 5, relating to organizations entitled to licenses, effective July 1,

2009. For provisions of former section, see the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-6. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-6 NMSA 1978, as enacted by Laws 1981, ch. 259, § 6, relating to license applications, effective July 1, 2009. For

provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-7. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-7 NMSA 1978, as enacted by Laws 1981, ch. 259, § 7, relating to form and display of licenses, effective July 1, 2009,

For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-8. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-8 NMSA 1978, as enacted by Laws 1981, ch. 259, § 8, relating to persons permitted to conduct games of chance,

effective July 1, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-9. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-9 NMSA 1978, as enacted by Laws 1981, ch. 259, § 9, relating to reports, effective July 1, 2009. For provisions of

former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-9.1. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-9.1 NMSA 1978, as enacted by Laws 2005, ch. 349, § 4, relating to bingo and raffle tax, effective July 1, 2009. For

provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-10. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-10 NMSA 1978, as enacted by Laws 1981, ch. 259, § 10, relating to examination of books and records, effective July 1,

2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-11. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-11 NMSA 1978, as enacted by Laws 1981, ch. 259, § 11, relating to forfeiture of license, effective July 1, 2009. For

provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-12. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-12 NMSA 1978, as enacted by Laws 1981, ch. 259, § 12, relating to enforcement, effective July 1, 2009. For

provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-13. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-13 NMSA 1978, as enacted by Laws 1981, ch. 259, § 13, relating to exemptions, effective July 1, 2009. For

provisions of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

60-2B-14. Repealed.

Repeals. — Laws 2009, ch. 81, § 30 repealed 60-2B-14 NMSA 1978, as enacted by Laws 1981, ch. 259, § 14, relating to penalties, effective July 1, 2009. For provisions

of former section, *see* the 2008 NMSA 1978 on *NMOneSource.com*.

ARTICLE 2C

Fireworks Licensing and Safety

Sec.

- 60-2C-1. Short title.
- 60-2C-2. Definitions.
- 60-2C-2.1. Repealed.
- 60-2C-3. License or permit required for sale of fireworks; administration; permits and licenses.
- 60-2C-4. License and permit fees.
- 60-2C-5. Possession, sale or use of unauthorized fireworks unlawful.
- 60-2C-6. Exportation of fireworks from the state.
- 60-2C-7. Permissible fireworks.

Sec.

- 60-2C-8. Retail sales or storage of fireworks; regulated activities.
- 60-2C-8.1. Extreme or severe drought conditions; restricted sale and use.
- 60-2C-9. Display fireworks.
- 60-2C-9.1. Theatrical pyrotechnics articles; compliance with national fire protection association standards required.
- 60-2C-10. Penalty; criminal.
- 60-2C-11. Penalty; civil.

60-2C-1. Short title.

Chapter 60, Article 2C NMSA 1978 may be cited as the "Fireworks Licensing and Safety Act".

History: Laws 1989, ch. 346, § 1; 1997, ch. 17, § 1.

The 1997 amendment, effective March 18, 1997, substituted "Chapter 60, Article 2C NMSA 1978" for "Sections 1 through 11 of this act".

ANNOTATIONS

Municipal or county regulation. — This article expressly removed from municipalities their general authority to regulate fireworks and replaced it with limited authority to regulate the use of aerial and ground audible devices. To the extent that municipalities have regulatory authority over specified devices, those devices are subject to double regulation as long as municipal regulations do not conflict with the requirements of this article. 1990 Op. Att'y Gen. No. 90-11.

This article denies all municipalities, including those with home rule charters, from regulating fireworks other than as provided by the statute. 1990 Op. Att'y Gen. No. 90-11.

A municipal ordinance that purports to prohibit all fireworks is contrary to the limited authority granted to municipalities under this article and, therefore, is void and without effect. 1990 Op. Att'y Gen. No. 90-11.

Counties have the same authority as municipalities to enact ordinances permitted by this article. 1990 Op. Att'y Gen. No. 90-11.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 31A Am. Jur. 2d Explosives §§ 2, 20, 48 to 56, 68, 70, 105, 111, 122, 125, 126; 56 Am. Jur. 2d Municipal Corporations § 204.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks, 48 A.L.R.5th 659.

15 C.J.S. Commerce §§ 85, 94; 16B C.J.S. Constitutional Law § 861; 62 C.J.S. Municipal Corporations §§ 676, 687, 695, 711, 712, 735, 754.

60-2C-2. Definitions.

As used in the Fireworks Licensing and Safety Act:

A. "aerial shell" means a cylindrical or spherical cartridge containing a lift charge, burst charge and effect composition. Upon firing from a reloadable tube, the lift charge is consumed and the cartridge is expelled into the air;

B. "aerial shell kit-reloadable tube" means a package or kit containing a cardboard, high-density polyethylene or equivalent launching tube and not more than twelve small aerial shells. Each aerial shell is limited to a maximum of sixty grams of total chemical composition, including lift charges, and the maximum diameter of each shell shall not exceed one and three-fourths inches;

C. "bosque" means a cottonwood corridor adjacent to a river;

D. "chaser" means a paper or cardboard tube venting out the fuse end of the tube that contains no more than twenty grams of chemical composition and travels along the ground, often producing a whistling effect or other noise; an explosive composition not to exceed fifty milligrams may be included to produce a report;

E. "chemical composition" includes all pyrotechnic and explosive composition contained in a fireworks device, but does not include inert materials such as clay used for plugs or organic matter such as rice hulls used for density control;

F. "cone fountain" means a cardboard or heavy paper cone containing no more than fifty grams of pyrotechnic composition that has the same effect as a cylindrical fountain. When more

than one cone is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

G. "crackling device" means a sphere or paper tube that contains no more than twenty grams of pyrotechnic composition that produces a flash of light and a mild, audible crackling effect upon ignition, which effect is not considered to be an explosion. Crackling devices are not subject to the fifty-milligram limit of firecrackers;

H. "cylindrical fountain" means a cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that produces a shower of colored sparks and sometimes a whistling effect or smoke. The device may be provided with a spike for insertion into the ground or a wood or plastic base for placing on the ground or a wood or cardboard handle to be hand held. When more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

I. "display distributor" means a person, firm or corporation selling display fireworks;

J. "display fireworks" means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than one hundred thirty milligrams of explosive composition; aerial shells containing more than forty grams of chemical composition exclusive of lift charge; and other exhibition display items that exceed the limits for permissible fireworks;

K. "distributor" means a person, firm or corporation selling fireworks to wholesalers and retailers for resale;

L. "explosive composition" means a chemical compound or mixture, the primary purpose of which is to function by explosion, producing an audible effect in a fireworks device;

M. "firecracker" means a small, paper-wrapped or cardboard tube containing no more than fifty milligrams of explosive composition that produces noise and a flash of light; provided that firecrackers used in aerial devices may contain up to one hundred thirty milligrams of explosive composition per report;

N. "fireworks" means devices intended to produce a visible or audible effect by combustion, deflagration or detonation and are categorized as "permissible fireworks" or "display fireworks", but does not include novelties or theatrical pyrotechnics articles;

O. "fitter sparkler" means a narrow paper tube attached to a stick or wire and filled with no more than five grams of pyrotechnic composition that produces color and sparks upon ignition and the paper at one end of the tube is ignited to make the device function;

P. "ground spinner" means a small, rapidly spinning device containing no more than twenty grams of pyrotechnic composition venting out an orifice usually on the side of the tube that when ignited produces a shower of sparks and color. "Ground spinner" is similar in operation to a wheel, but is intended to be placed flat on the ground and ignited;

Q. "helicopter" or "aerial spinner" means a tube containing no more than twenty grams of chemical composition with a propeller or blade attached that spins rapidly as it rises into the air with a visible or audible effect sometimes produced at or near the height of flight;

R. "illuminating torch" means a cylindrical tube containing no more than one hundred grams of pyrotechnic composition that produces a colored flame upon ignition and may be spiked, based or hand held. When more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

S. "manufacturer" means a person, firm or corporation engaged in the manufacture of fireworks;

T. "mine" or "shell" means a heavy cardboard or paper tube usually attached to a wooden or plastic base and containing no more than sixty grams of total chemical composition, including lift charges, per tube that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect, or other devices propelled into the air, and that contains components producing reports containing a maximum one hundred thirty milligrams of explosive composition per report. A mine may contain more than one tube, but the tubes must fire in sequence upon ignition of one external fuse, must be a dense-packed collection of mine or shell tubes and the total chemical composition, including lift charges, shall not exceed two hundred grams;

U. "missile-type rocket" means a device similar to a stick-type rocket in size, composition and effect that uses fins rather than a stick for guidance and stability and that contains no more than twenty grams of chemical composition;

V. "multiple tube devices" means a device that contains more than one cardboard tube and the ignition of one external fuse that causes all of the tubes to function in sequence. The tubes are individually attached to a wood or plastic base or are dense-packed and are held together by glue, wire, string or other means that securely hold the tubes together during operation. A maximum total weight of five hundred grams of pyrotechnic composition shall be permitted; provided that the tubes are securely attached to a wood or plastic base and are separated from each other on the base by a distance of at least one-half inch. The connecting fuses on multiple tube devices shall be fused in sequence so that the tubes fire sequentially rather than all at once;

W. "novelties" means devices containing small amounts of pyrotechnic or explosive composition that produce limited visible or audible effects, including party poppers, snappers, toy smoke devices, snakes, glowworms, sparklers or toy caps, and devices intended to produce unique visual or audible effects that contain sixteen milligrams or less of explosive composition and limited amounts of other pyrotechnic composition, including cigarette loads, trick matches, explosive auto alarms and other trick noisemakers;

X. "permissible fireworks" or "consumer fireworks" means fireworks legal for sale to and use in New Mexico by the general public that comply with the latest construction, performance, composition and labeling requirements established by the United States consumer product safety commission and the United States department of transportation;

Y. "pyrotechnic composition" means a chemical mixture that on burning and without explosion produces visible or brilliant displays or bright lights or whistles or motion;

Z. "retailer" means a person, firm or corporation purchasing fireworks for resale to consumers;

AA. "roman candle" means a heavy paper or cardboard tube containing no more than twenty grams of chemical composition that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect;

BB. "specialty retailer" means a person, firm or corporation purchasing permissible fireworks for year-round resale in permanent retail stores whose primary business is tourism;

CC. "stick-type rocket" means a cylindrical tube containing no more than twenty grams of chemical composition with a wooden stick attached for guidance and stability that rises into the air upon ignition and produces a burst of color or sound at or near the height of flight;

DD. "theatrical pyrotechnics articles" means a pyrotechnic device for professional use in the entertainment industry similar to permissible fireworks or consumer fireworks in chemical composition and construction but not intended and labeled for consumer use;

EE. "toy smoke device" means a small plastic or paper item containing no more than one hundred grams of pyrotechnic composition that produces white or colored smoke as the primary effect;

FF. "wheel" means a pyrotechnic device that is made to attach to a post or other surface and that revolves, producing a shower of color and sparks and sometimes a whistling effect, and that may have one or more drivers, each of which contains no more than sixty grams of pyrotechnic composition and the total wheel contains no more than two hundred grams total pyrotechnic composition;

GG. "wholesaler" means a person, firm or corporation purchasing fireworks for resale to retailers; and

HH. "wildlands" means lands owned by the governing body of a county or municipality that are designated for public recreational purposes and that are covered wholly or in part by timber, brush or native grass.

History: Laws 1989, ch. 346, § 2; 1991, ch. 133, § 1; 1997, ch. 17, § 2; 1999, ch. 58, § 1; 2007, ch. 268, § 1.

The 2007 amendment, effective April 2, 2007, added Subsections A through C, V through X and DD; excluded novelties and theatrical pyrotechnics articles from the definition of "fireworks"; increased the chemical composition of a mine or shell to sixty grams; required "permissible fireworks" or "consumer fireworks" to comply with the requirements of the United States consumer product

safety commission and the United States department of transportation; and defined "wildlands" to be lands owned by a county or municipality for public recreational purposes.

The 1999 amendment, effective March 17, 1999, added Subsection BB and made minor stylistic changes.

The 1997 amendment, effective March 18, 1997, rewrote this section to the extent that a detailed comparison is impracticable.

60-2C-2.1. Repealed.

Repeals. — Laws 2007, ch. 268, § 6 repealed 60-2C-2.1 NMSA 1978, as enacted by Laws 1997, ch. 17, § 8, relating to novelties, effective April 2, 2007. For provisions

of former section, see the 2006 NMSA 1978 on *NMOne Source.com*.

60-2C-3. License or permit required for sale of fireworks; administration; permits and licenses.

A. No person may sell, hold for sale, import, distribute or offer for sale, as manufacturer, distributor, wholesaler or retailer, any fireworks in this state unless such person has first obtained the appropriate license or permit.

B. The state fire marshal shall enforce the Fireworks Licensing and Safety Act. All license applications shall be submitted to the office of the state fire marshal. All retailers shall be required to purchase a retail fireworks permit for each retail location. The retail permit may be purchased from any licensed manufacturer, distributor or wholesaler or from the state fire marshal's office. Retail permits may be purchased at any time by the licensed manufacturer, distributor or wholesaler in books of twenty permits per book from the state fire marshal. Permits shall be numbered, and it shall be the responsibility of the licensed manufacturer, distributor or wholesaler to keep records of the purchases of these permits and to submit these records to the state fire marshal semi-annually on January 31 and July 31 of each year. Each semi-annual report is to cover the preceding six-month period. Retail permits that are unsold may be exchanged for new permits.

C. The state fire marshal shall appoint the deputies and employees required to carry out the provisions of the Fireworks Licensing and Safety Act. The state fire marshal may also appoint any commissioned law enforcement officer or duly appointed fire chief or his designee with approval from the local governing body required to carry out the provisions of that act.

D. The state fire board shall formulate, adopt, promulgate and amend or revise rules and regulations for the safe handling of fireworks.

History: Laws 1989, ch. 346, § 3; 1991, ch. 133, § 2; 1997, ch. 17, § 3.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 1997 amendment, effective March 18, 1997, in Subsection B, substituted "Retail permits" for "These permits" at the beginning of the fifth sentence and "ten permits" for "twenty permits" near the end of that sentence;

and in Subsection C, substituted "fire chief or his designee" for "fire chief or his designate" in the second sentence.

The 1991 amendment, effective June 14, 1991, in Subsections A and B, deleted "importer" following "wholesaler" and made related stylistic changes; in the second sentence in Subsection C, substituted "commissioned" for "certified" and inserted "or his designee"; and added Subsection D.

60-2C-4. License and permit fees.

A. An applicant for a license or permit under the Fireworks Licensing and Safety Act shall pay to the state fire marshal's office the following fees, which shall not be refundable:

- | | |
|---------------------------------|----------|
| (1) manufacturer license | \$1,500; |
| (2) distributor license | 2,000; |
| (3) wholesaler license | 1,000; |
| (4) display distributor license | 1,000; |
| (5) specialty retailer license | 750; |
| (6) retailer permit | 100; or |
| (7) replacement permit | 20. |

B. All licenses and permits shall be issued for one year beginning on February 1 of each year. All licenses and permits shall be issued within thirty days from the date of receipt of application, except that no application shall be processed during any holiday selling period in which permissible fireworks may be sold.

C. Licenses issued pursuant to provisions of the Fireworks Licensing and Safety Act shall not be restricted in number or limited to any person without cause. Municipalities and counties may

require licenses or permits and reasonable fees, not to exceed twenty-five dollars (\$25.00), for the sale of fireworks.

D. Permit and license fees paid to the state fire marshal's office shall be deposited in the fire protection fund to be used by the state fire marshal to enforce and carry out the provisions and purposes of the Fireworks Licensing and Safety Act.

History: Laws 1989, ch. 346, § 4; 1991, ch. 133, § 3; 1997, ch. 17, § 4; 1999, ch. 58, § 2; 2007, ch. 268, § 2.

The 2007 amendment, effective April 2, 2007, imposed a fee of \$20.00 for a license replacement.

The 1999 amendment, effective March 17, 1999, inserted "license" in Subsection A(4), substituted "twenty-five dollars (\$25.00)" for "fifty dollars (\$50.00)" in the second sentence of Subsection C, and made minor stylistic changes.

The 1997 amendment, effective March 18, 1997, substituted "processed during each holiday selling period in

which permissible fireworks may be sold" for "processed from May 10 through July 10 of each year" at the end of the second sentence in Subsection B.

The 1991 amendment, effective June 14, 1991, in Subsection A, rewrote Paragraph (4), which provided a fee of \$250 for an importer license, substituted "750" for "100" in Paragraph (5) and "100" for "50.00" in Paragraph (6) and added the exception at the end of Subsection B.

60-2C-5. Possession, sale or use of unauthorized fireworks unlawful.

No individual, firm, partnership, corporation or association shall possess for retail sale in this state, sell or offer for sale at retail or possess or use any fireworks other than permissible fireworks.

History: Laws 1989, ch. 346, § 5; 1991, ch. 133, § 4.

The 1991 amendment, effective June 14, 1991, inserted "or possess" near the end of the section.

60-2C-6. Exportation of fireworks from the state.

Nothing in the Fireworks Licensing and Safety Act shall prohibit licensed wholesalers, distributors, importers or manufacturers from storing, selling, shipping or otherwise transporting fireworks as defined by the United States department of transportation to any person or entity outside the state of New Mexico.

History: Laws 1989, ch. 346, § 6.

60-2C-7. Permissible fireworks.

A. Permissible fireworks are:

(1) ground and hand-held sparkling devices:

- (a) cone fountains;
- (b) crackling devices;
- (c) cylindrical fountains;
- (d) flitter sparklers;
- (e) ground spinners;
- (f) illuminating torches; and
- (g) wheels;

(2) aerial devices:

- (a) aerial shell kit-reloadable tubes;
- (b) aerial spinners;
- (c) helicopters;
- (d) mines;
- (e) missile-type rockets;
- (f) multiple tube devices;
- (g) roman candles;
- (h) shells; and
- (i) stick-type rockets, except as provided in Subsection B of this section; and

(3) ground audible devices:

- (a) chasers; and
- (b) firecrackers.

B. The following types of fireworks are not permissible fireworks:

- (1) stick-type rockets having a tube less than five-eighths inch outside diameter and less than three and one-half inches in length; and
- (2) fireworks intended for sale to the public that produce an audible effect, other than a whistle, by a charge of more than one hundred thirty milligrams of explosive composition per report.

C. A municipality or county shall not by ordinance regulate and prohibit the sale or use of any permissible firework except aerial devices and ground audible devices.

History: Laws 1989, ch. 346, § 7; 1991, ch. 133, § 5; 1997, ch. 17, § 5; 2007, ch. 268, § 3.

The 2007 amendment, effective April 2, 2007, added aerial shell kit-reloadable tubes and multiple tube devices as permissible aerial devices and classifies as non-permissible fireworks stick-type rockets having a tube less than five-eighths inch outside diameter and less than

three and one-half inches in length and fireworks that produce an audible effect by a charge of more than one hundred thirty milligrams of explosive composition per report.

The 1997 amendment, effective March 18, 1997, rewrote this section to the extent that a detailed comparison is impracticable.

60-2C-8. Retail sales or storage of fireworks; regulated activities.

A. Fireworks may not be sold at retail without a retail permit. The permit shall be at the location where the retail sale takes place.

B. All places where fireworks are stored, sold or displayed shall be in compliance with the code of safety standards published by the national fire protection association for the manufacture, transportation, storage and retail sales of fireworks and pyrotechnics articles.

C. It is unlawful to offer for sale or to sell fireworks to children under the age of sixteen years or to an intoxicated person.

D. At all places where fireworks are stored, sold or displayed, the words "NO SMOKING" shall be posted in letters at least four inches in height. Smoking, open flames and any ignition source are prohibited within twenty-five feet of fireworks stock.

E. Fireworks shall not be stored, kept, sold or discharged within fifty feet of a gasoline pump or gasoline bulk station or a building in which gasoline or volatile liquids are sold in quantities in excess of one gallon, except in stores where cleaners, paints and oils are handled in sealed containers only.

F. All fireworks permittees and licensees shall keep and maintain upon the premises a fire extinguisher bearing an underwriters laboratories incorporated rated capacity of at least five-pound ABC per five hundred square feet of space used for fireworks sales or storage.

G. Sales clerks and ancillary personnel employed or volunteering at temporary retail locations where fireworks are sold shall be at least sixteen years of age. A sales clerk shall be on duty to serve consumers at the time of purchase or delivery. Permissible fireworks may be offered for sale only at state-permitted or state-licensed retail locations.

H. Fireworks shall not be discharged within one hundred fifty feet of a fireworks retail sales location.

I. Fireworks shall not be sold or used on state forest land, wildlands or a bosque.

J. A person shall not ignite fireworks within a motor vehicle or throw fireworks from a motor vehicle, nor shall a person place or throw ignited fireworks into or at a motor vehicle or at or near a person or group of people.

K. Fireworks devices that are readily accessible to handling by consumers or purchasers in a retail sales location shall have their exposed fuses protected in a manner to protect against accidental ignition of an item by a spark, cigarette ash or other ignition source. If the fuse is a thread-wrapped safety fuse that has been coated with a nonflammable coating, only the outside end of the safety fuse shall be covered. If the fuse is not a safety fuse, the entire fuse shall be covered.

L. Permissible fireworks may be sold at retail between June 20 and July 6 of each year, six days preceding and including new year's day, three days preceding and including Chinese new year, the sixteenth of September and cinco de Mayo of each year, except that permissible fireworks may be sold all year in permanent retail stores whose primary business is tourism.

History: Laws 1989, ch. 346, § 8; 1991, ch. 133, § 6; 1997, ch. 17, § 6; 2007, ch. 268, § 4.

The 2007 amendment, effective April 2, 2007, added Subsection B and required persons who sell fireworks to be at least sixteen years of age.

The 1997 amendment, effective March 18, 1997, substituted "age of sixteen" for "age of twelve" in Subsection B, rewrote the last sentence of Subsection F, added Subsection H and redesignated the following subsections accordingly, and rewrote Subsection K.

The 1991 amendment, effective June 14, 1991, substituted "shall" for "must" throughout the section, "Smoking, open flames and any ignition source are prohibited" for "Smoking is prohibited" at the beginning of the second sentence in Subsection C and "5 lb. ABC per five hundred square feet of space used for fireworks sales or storage" for "4-ABC" at the end of Subsection E and made a minor stylistic change in Subsection F.

60-2C-8.1. Extreme or severe drought conditions; restricted sale and use.

A. The governing body of a municipality may hold a hearing to determine if fireworks restrictions should be imposed within the boundaries of the incorporated municipality affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.

B. Pursuant to any hearing under Subsection A of this section, the governing body of a municipality shall issue a proclamation declaring extreme or severe drought conditions within the boundaries of the incorporated municipality if the governing body determines such conditions exist. The governing body's proclamation:

- (1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and
- (2) shall give the governing body the power to:
 - (a) limit the use within its jurisdiction of any fireworks not listed in Paragraph (1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public;
 - (b) ban the use of all fireworks within wildlands in its jurisdiction, after consultation with the state forester; and
 - (c) ban or restrict the sale or use of display fireworks.

C. The municipal governing body's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.

D. A municipal governing body's proclamation shall be effective for thirty days and the governing body may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day period by the governing body upon conducting an emergency hearing to determine if weather conditions have improved.

E. The governing body of a county may hold a hearing to determine if fireworks restrictions should be imposed within the unincorporated portions of the county affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.

F. Pursuant to any hearing under Subsection E of this section, the governing body of a county shall issue a proclamation declaring extreme or severe drought conditions within the unincorporated portions of the county if the governing body determines such conditions exist. The governing body's proclamation:

- (1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and
- (2) shall give the governing body the power to:
 - (a) limit the use within its jurisdiction of any fireworks not listed in Paragraph (1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public;
 - (b) ban the use of all fireworks within wildlands in its jurisdiction, after consultation with the state forester; and
 - (c) ban or restrict the sale or use of display fireworks.

G. The county governing body's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.

H. Except as otherwise provided in this subsection, a proclamation shall be effective for thirty days, and the county governing body may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day period by the governing body upon conducting an emergency hearing to determine if weather conditions have improved.

History: Laws 1997, ch. 17, § 9; 1999, ch. 58, § 3.

The 1999 amendment, effective March 17, 1999, in Subsection A, in the first sentence substituted "governing body of a municipality" for "state fire board", substituted "within the boundaries of the incorporated municipality" for "in all or a portion of the state", and inserted "or severe"; in the second sentence substituted "governing body" for "state fire board" and deleted "and the U.S. department of agriculture" at the end of the sentence; in Subsection B, rewrote the introductory language, substituted "the governing body" for "local governments" in Paragraph (2), added Subparagraph (2)(b), redesignated former Subparagraph (2)(b) as Subparagraph (2)(c), and

deleted Paragraph (3), which read "may ban or restrict the use of any type of fireworks on state lands within the affected drought area"; in Subsection C, rewrote the first sentence and added the second sentence; in Subsection D, in the first sentence, substituted "A municipal governing body's" for "Except as otherwise provided in this subsection" and inserted "or severe", in the first and second sentences, substituted "governing body" for "state fire board" and substituted "have improved" for "improve sufficiently to alleviate fire dangers" at the end of the second sentence; added Subsections E through H; and made minor stylistic changes.

60-2C-9. Display fireworks.

Except as provided in Section 9 [60-26-8.1 NMSA 1978] of this act, nothing in the Fireworks Licensing and Safety Act shall prohibit the display of display fireworks, except that any individual, association, partnership, corporation, organization, county or municipality shall secure a written permit from the governing body of the county or municipality where the display is to be fired and the display fireworks shall be purchased from a distributor or display distributor licensed by the state fire marshal and the bureau of alcohol, tobacco and firearms at the United States department of the treasury.

History: Laws 1989, ch. 346, § 9; 1991, ch. 133, § 7; 1997, ch. 17, § 7.

The 1997 amendment, effective March 18, 1997, substituted "Display fireworks" for "Public display of fireworks" in the section heading, added the exception at the beginning of the section, substituted "the display

of display fireworks" for "the public display of fireworks" following "shall prohibit" and substituted "the display is to be fired and the display fireworks shall" for "the public display is to be fired and the fireworks shall".

The 1991 amendment, effective June 14, 1991, inserted "or display distributor" near the end of the section.

60-2C-9.1. Theatrical pyrotechnics articles; compliance with national fire protection association standards required.

All places where theatrical pyrotechnics articles are manufactured, stored, sold or displayed shall be in compliance with the code of safety standards published by the national fire protection association for the use of pyrotechnics before a proximate audience.

History: Laws 2007, ch. 268, § 5.

Cross references. — For the Child Labor Act, see 50-6-1.1 NMSA 1978.

Emergency clause. — Laws 2007, ch. 268, § 7 contained an emergency clause and was approved April 2, 2007.

60-2C-10. Penalty; criminal.

A. Any individual, firm, partnership or corporation that violates any provision of the Fireworks Licensing and Safety Act is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year, or both.

B. Nothing in the Fireworks Licensing and Safety Act shall apply to or prohibit any employees of the department of game and fish or the United States fish and wildlife service from possessing

fireworks for control of game birds and animals or to prohibit any law enforcement officer from possessing fireworks in the performance of his duties or to prohibit any municipality or civic organization therein from sponsoring and conducting in connection with any public celebration, an officially supervised and controlled fireworks display.

History: Laws 1989, ch. 346, § 10.

60-2C-11. Penalty; civil.

A. If a person is found guilty of violating any of the provisions of the Fireworks Licensing and Safety Act, that person's license or permit may be revoked or suspended by the state fire marshal, his deputies or designees.

B. No individual, firm, corporation or partnership shall possess any fireworks for sale within New Mexico, other than those authorized in the Fireworks Licensing and Safety Act. The state fire marshal, his deputies or designees may at reasonable hours enter and inspect the permittee's premises, building, mobile or motor vehicle or temporary or permanent structure to determine compliance with the Fireworks Licensing and Safety Act. If any retailer has in his possession any fireworks in violation of that act, his permit shall be revoked and all such fireworks seized, and the fireworks shall be kept to be used as evidence. If any person has in his possession any fireworks in violation of that act, a warrant may be issued for the seizure of fireworks and the fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the permissible fireworks shall be returned to the person in whose possession they were found; provided, however, that nothing in the Fireworks Licensing and Safety Act applies to the transportation of fireworks by regulated carriers.

History: Laws 1989, ch. 346, § 11.

Severability. — Laws 1989, ch. 346, § 14 provided for the severability of the Fireworks Licensing and Safety Act if any part or application thereof is held invalid.

ARTICLE 2D

Bicycle Racing

Sec.	Sec.
60-2D-1. Short title.	60-2D-11. Renewal licenses.
60-2D-2. Definitions.	60-2D-12. Liability insurance; bond; pari-mutuel bicycle-racing licensee.
60-2D-3. Commission created; appointments; qualifications.	60-2D-13. License; refusal to issue.
60-2D-4. Organization and officers; per diem.	60-2D-14. Revocation and suspension.
60-2D-5. Powers and duties.	60-2D-15. Pari-mutuel wagering; breakage; uncashed tickets.
60-2D-6. Employees.	60-2D-16. Pari-mutuel wagering; taxes.
60-2D-7. Rules and regulations.	60-2D-17. Violations.
60-2D-8. Enforcement; investigation; subpoena.	60-2D-18. Penalty.
60-2D-9. Licenses; limitations; fees.	
60-2D-10. Applications for pari-mutuel bicycle-racing licenses.	

60-2D-1. Short title.

This act [60-2D-1 to 60-2D-18 NMSA 1978] may be known as the "Bicycle Racing Act".

History: Laws 1991, ch. 233, § 1.

60-2D-2. Definitions.

As used in the Bicycle Racing Act:

A. "commission" means the bicycle racing commission;

- B. "bicycle racing" means racing at Keiren velodrome bicycle-racing tracks approved by the commission;
- C. "license" means a license for a racing meet issued under the provisions of the Bicycle Racing Act; and
- D. "secretary" means the executive secretary of the commission.

History: Laws 1991, ch. 233, § 2.

60-2D-3. Commission created; appointments; qualifications.

The "bicycle racing commission" is created. The commission shall consist of three commissioners appointed by the governor. The first commission members shall be appointed for staggered terms, one ending on July 1, 1993 and one ending on July 1 of each of the following two odd-numbered years. Thereafter, appointments shall be for terms of six years. Vacancies for any unexpired term shall be filled by the governor. To be eligible for appointment, all persons shall be citizens, residents of the state and qualified electors.

History: Laws 1991, ch. 233, § 3.

60-2D-4. Organization and officers; per diem.

A. Within thirty days after appointment, the first commission shall organize for the transaction of business by selecting one of its members as chairman. The commission shall meet annually in September and may meet as often as it deems necessary on the call of the chairman or any two members of the commission. Members of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

B. The commission shall maintain an office within the state and keep detailed records of all its meetings and all business transacted by it. Complete records shall be kept of all collections and disbursements. The commission shall report annually on June 30 to the governor on its activities for the preceding year.

C. The expenses of the commission shall be paid out of the state's allocation of the proceeds from the bicycle-racing pari-mutuel tax as provided in Section 16 [60-2D-16 NMSA 1978] of the Bicycle Racing Act. Payment of expenses by the commission shall be on vouchers issued and signed by the person designated by the commission, upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department of finance and administration.

History: Laws 1991, ch. 233, § 4.

60-2D-5. Powers and duties.

The commission shall, in its discretion and subject to its rules and regulations:

- A. license all persons desiring to participate, except as spectators, in bicycle racing at Keiren velodrome bicycle-racing tracks within this state approved by the commission;
- B. supervise all licensees and all races, race meets and racetracks operating under its jurisdiction;
- C. set the time, place and duration of all race meets under its jurisdiction;
- D. suspend or revoke licenses for violation of the law or rules and regulations of the commission;
- E. do all other things necessary and proper to fulfill its obligations under the Bicycle Racing Act;
- F. have all places where bicycle-racing meets are held visited and inspected at least once a year by its members or employees;
- G. require all pari-mutuel bicycle-racing meets to be held at Keiren velodrome bicycle-racing tracks in this state and in accordance with the rules and regulations of the commission;

- H. supervise the operations of pari-mutuel machines and equipment and the operation of all money rooms, accounting rooms and seller's and cashier's windows;
- I. supervise the weighing and inspection of bicycles; and
- J. make saliva and urine tests on bicycle racers selected by the commission or its employees at every race.

History: Laws 1991, ch. 233, § 5.

60-2D-6. Employees.

The commission shall hire an executive secretary and such other employees as are necessary to its duties, at salaries to be set by the commission.

History: Laws 1991, ch. 233, § 6.

60-2D-7. Rules and regulations.

The commission shall promulgate reasonable rules and regulations governing bicycle racing in this state. These rules and regulations shall:

- A. govern the application procedures for all licenses issued by the commission;
- B. provide for the supervision, direction and discipline of licensees of the commission;
- C. govern, subject to the Uniform Licensing Act [61-1-1 NMSA 1978], the issuance, suspension and revocation of licenses issued by the commission;
- D. provide for the barring from bicycle racing and bicycle-racing tracks of any persons, including those required to be licensed by the commission;
- E. determine the distribution of the gross receipts of all pari-mutuel bicycle-racing wagers that shall be payable as pari-mutuel winnings, as race purses to the winning bicycle racers and as commissions to the licensee;
- F. set standards for the holding, conducting and operating of all bicycle races, race meets and racetracks under the supervision of the commission; and
- G. become effective only after they have been filed in accordance with the State Rules Act [14-4-1 NMSA 1978].

History: Laws 1991, ch. 233, § 7.

60-2D-8. Enforcement; investigation; subpoena.

The commission shall enforce or secure the enforcement, through the proper officials, of all the laws, rules, regulations and orders of the commission. The commission shall investigate on its own motion, or upon receipt of any information or complaint concerning any violation of the Bicycle Racing Act or any rule, regulation or order issued pursuant to that act or upon receipt of any application, any information contained or which should be contained in the application. In enforcement of the Bicycle Racing Act or in any investigation, the commission may exercise the power of subpoena. Any member of the commission may administer oaths or affirmations. If any person refuses to obey a subpoena, the commission may present its petition to the district court in Santa Fe county setting forth the facts, and the district court shall issue its subpoena to the person.

History: Laws 1991, ch. 233, § 8.

60-2D-9. Licenses; limitations; fees.

- A. The commission shall require licenses of all bicycle racers, trainers, starters, assistant starters, pari-mutuel employees, authorized racer's or owner's agents and any other person, whether operating under his own name or a trade or assumed name, who wishes to participate,

except as a spectator, in a bicycle-racing meet in this state. This license shall be known as a "general bicycle-racing license" and shall state on its face the capacity in which the licensee will participate in bicycle racing in this state. The fee for a general bicycle-racing license shall be set by the commission in an amount not to exceed fifty dollars (\$50.00) per year. The fee shall not be prorated for part of a year.

B. The commission shall require a license for any person to hold bicycle-racing meets with pari-mutuel wagering. This license shall be known as a "pari-mutuel bicycle-racing license" and shall state on its face the time, place and duration of all bicycle-racing meets authorized by that license and the number of races allowed per day. The fee for such a license shall be set by the commission and shall not exceed one thousand dollars (\$1,000) for any one calendar year, regardless of the number of days of bicycle-racing meets covered by the license.

C. The commission may issue a pari-mutuel bicycle-racing license for:

- (1) a bicycle-racing season; and
- (2) one day, to be known as a charity day, on which day the licensee shall remit the taxes owed to the state, deduct an amount equal to the purses and the cost of conducting the racing on that day and donate the balance to nonprofit organizations engaged in charitable, benevolent or eleemosynary activities selected by the licensee and approved by the commission.

History: Laws 1991, ch. 233, § 9.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

60-2D-10. Applications for pari-mutuel bicycle-racing licenses.

A. Each initial application for a pari-mutuel bicycle-racing license shall:

- (1) be made under oath on a form supplied by the commission and shall be filed on a date set by the commission by regulation;
- (2) set forth the time, place and number of days of the proposed bicycle-racing meet;
- (3) state the full name and address of the applicant and, if a corporation, the names and addresses of all its officers and directors and of all the holders of each class of its stock and the amount of stock of each class owned by each stockholder;
- (4) present a current financial statement of the applicant;
- (5) identify the bicycle-racing track where the proposed bicycle-racing meet will be held and the names and addresses of the owners of all property to be used;
- (6) give a description of the land uses within a radius of two miles of the proposed meet; and
- (7) state any other information deemed necessary by the commission or required by its regulations.

B. Upon receipt of the initial application, the commission shall set a date for a hearing on the application and require the applicant to give public notice of the hearing, in a form set by the commission, giving the time, place and purpose of the hearing by publication in a newspaper in general circulation in the area of the proposed meet, once a week for three consecutive weeks, and by posting a notice on the site of the proposed bicycle-racing meet, in a form and size set by the commission.

C. The commission shall conduct the public hearing, and any interested person may be heard. Among other things, the commission may hear evidence concerning:

- (1) the number of licenses already granted;
- (2) the location of tracks previously licensed; and
- (3) the desires of the residents of the county.

History: Laws 1991, ch. 233, § 10.

60-2D-11. Renewal licenses.

Pari-mutuel bicycle-racing licenses may be renewed upon application of the licensee annually for the same dates or for other dates the licensee requests, but for not less than the total number of

days allotted during the preceding year. The application for a renewal shall be in the same form as the original application, shall contain the same information, brought up to date, and shall contain the same attachments, but shall not require a public hearing.

History: Laws 1991, ch. 233, § 11.

60-2D-12. Liability insurance; bond; pari-mutuel bicycle-racing licensee.

Every pari-mutuel bicycle-racing licensee shall, as a condition to receiving a license to conduct bicycle-racing meets:

A. carry public liability insurance in a form, in an amount and with a company approved by the commission, for the protection of the public, exhibitors, contestants, visitors, other licensees and spectators; and

B. provide and deliver to the commission a bond in a form required by the commission, in favor of the state, in a penal sum of not less than fifty thousand dollars (\$50,000) and any further amount required by the commission, conditioned upon:

(1) the payment by the licensee to the state all money due it under the provisions of the Bicycle Racing Act;

(2) the licensee's discharging all obligations to his employees, exhibitors, contestants and persons furnishing labor and material in connection with any race meet or in connection with the construction, maintenance, repair or operation of the racetrack or buildings or grounds connected therewith; and

(3) generally, that the licensee will conduct the bicycle-racing meet strictly in accordance with the provisions of the Bicycle Racing Act and the rules and regulations of the commission and will not violate any other law of this state while operating under a license issued by the commission.

History: Laws 1991, ch. 233, § 12.

60-2D-13. License; refusal to issue.

The commission, using the procedures of the Uniform Licensing Act [61-1-1 NMSA 1978]:

A. when dealing with a general bicycle-racing license, shall refuse to issue a license if the applicant:

(1) as an individual or, if a partnership, joint venture or corporation, if any partner, joint venturer, officer or director has been convicted of any crime which if committed in New Mexico is or would have been a felony or of the violation of any law of the United States or of any state concerning gambling or racing or of any rule or regulation of this or any other racing commission; or

(2) fails to pay the required fees or any other payment required by the Bicycle Racing Act;

B. when dealing with a pari-mutuel bicycle-racing license, shall refuse to issue the license for the reasons given in Subsection A of this section or, in addition, if the applicant:

(1) is not a bona-fide resident of New Mexico;

(2) is a foreign corporation;

(3) is a corporation and does not have a provision in its charter that none of the voting stock of the corporation shall be sold, mortgaged or otherwise pledged or transferred without ten days' prior written notice to the commission;

(4) is a corporation any of the voting stock of which is held for an undisclosed principal, unless the corporation is listed on a national stock exchange and the named stockholder is a recognized nominee; or

(5) refuses to agree that he will not thereafter sell, mortgage or otherwise pledge or dispose of any of the assets listed and described on the application for license without giving the commission ten days' written notice;

C. when dealing with a general bicycle-racing license, may refuse to issue the license if the applicant makes any false or fraudulent statement of a material nature in the application; or

D. when dealing with a pari-mutuel bicycle-racing license, may refuse to issue the license for the reason given in Subsection C of this section or if:

(1) the financial standing of the applicant and his ability or, if a partnership, joint venture or corporation, the financial standing of the partnership, joint venture or corporation or the ability of the partners, joint venturers, officers or directors of the corporation are such that in the opinion of the commission it is not in the best interest of the state to grant the license;

(2) the sentiments of the residents of the area and the county in which it is proposed to conduct the bicycle-racing meet are against the license; or

(3) for any other reason it is not in the best interest of the state, the racing industry and the area and county in which it is proposed to conduct the bicycle-racing meets to grant the license.

History: Laws 1991, ch. 233, § 13.

60-2D-14. Revocation and suspension.

The commission, using the procedures of the Uniform Licensing Act [61-1-1 NMSA 1978]:

A. when dealing with a general bicycle-racing license, may revoke or suspend the license if the licensee:

(1) as an individual or, if a partnership, joint venture or corporation, if any partner, joint venturer, officer or director has been convicted of any crime which if committed in New Mexico is or would have been a felony or of the violation of any law of the United States or of any state concerning gambling or racing or of any rule or regulation of this or any other racing commission; or

(2) has made any false or fraudulent statement of a material nature in his application; or

B. when dealing with a pari-mutuel bicycle-racing license, may revoke or suspend the license for any reason given in Subsection A of this section or if the licensee:

(1) incorporates as a foreign corporation;

(2) loses his residence in New Mexico;

(3) is a corporation and amends its charter to allow its voting stock to be sold, mortgaged or otherwise pledged or transferred without ten days' prior written notice to the commission;

(4) is a corporation and sells, mortgages or otherwise pledges or transfers any of the voting stock of the corporation without ten days' prior written notice to the commission;

(5) is a corporation and allows any of its voting stock to be held for an undisclosed principal, unless the corporation is listed on a national stock exchange and the named stockholder is a recognized nominee; or

(6) sells, mortgages or otherwise pledges or disposes of any of the assets listed and described on the application for license without approval of the commission.

History: Laws 1991, ch. 233, § 14.

60-2D-15. Pari-mutuel wagering; breakage; uncashed tickets.

A. A pari-mutuel bicycle-racing licensee may conduct pari-mutuel wagering. In the conduct of such wagering, all breakage shall be split equally between the state and the licensee. Breakage shall be those odd cents remaining after paying winning ticket holders a minimum of ten cents (\$.10) for each one dollar (\$1.00) wagered. If during any bicycle-racing meet conducted under the Bicycle Racing Act there are underpayments of the amount actually due to the wagerers, the amount of the excess of such underpayments, over and above overpayments to wagerers on the expiration of thirty days after the end of the meet, shall be paid to the state treasurer. Uncashed tickets may be presented to the licensee for payment at any time.

B. If a governmental agency imposes a levy on the licensee of a tax on the money wagered and upon its receipts, the licensee may collect, in addition to the percentage and breakage allowed in

this section, the amount of the tax so levied. The tax and breakage and license fees provided in the Bicycle Racing Act shall be in lieu of all other license and excise taxes levied by the state or any of its political subdivisions for the privilege of conducting bicycle-racing meets licensed under the Bicycle Racing Act.

History: Laws 1991, ch. 233, § 15.

ANNOTATIONS

Pari-mutuel gambling on bicycle racing prohibited by federal law. — The federal Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701 et seq., prohibits the state from authorizing the commencement

of pari-mutuel gambling on Keirin style velodrome bicycle racing pursuant to the Bicycle Racing Act, as the federal act only allows such gambling if gambling actually occurred between September 1, 1989 and October 2, 1991, and no such gambling occurred in the state during such time period. 2001 Op. Att'y Gen. No. 01-01.

60-2D-16. Pari-mutuel wagering; taxes.

Each licensee holding a pari-mutuel bicycle-racing license shall withhold fifteen percent from the pari-mutuel bicycle-racing wagers made and pay daily:

A. thirteen percent of the gross receipts of all pari-mutuel bicycle-racing wagers at a meet to the state treasurer, which shall be deposited in the general fund; and

B. two percent of the gross receipts of all pari-mutuel bicycle-racing wagers made at a meet to the county treasurer of the county in which the meet is held.

These amounts shall constitute the "bicycle-racing pari-mutuel tax".

History: Laws 1991, ch. 233, § 16.

60-2D-17. Violations.

It is unlawful:

A. for any licensee or any trainer of any person licensed to enter any racing contest supervised by the commission to fail to comply with all rules, regulations and orders issued by the commission;

B. for any person to participate except as a spectator in any racing contest supervised by the commission without first obtaining the required license;

C. for any person to hold a bicycle-racing meet with pari-mutuel wagering without obtaining the required license;

D. for any person holding or participating in any racing contest supervised by the commission to fail to inform the commission or its employees of any violation of any law, rule, regulation or order of the commission;

E. for any licensee to permit any person who has not reached his twenty-first birthday to wager at a bicycle-racing meet;

F. to conduct pool-selling bookmaking or to conduct handbooks or to bet or wager on any bicycle-racing meet licensed by the commission, other than by the pari-mutuel method; or

G. for any pari-mutuel bicycle-racing licensee to compute breaks in the pari-mutuel system other than at ten cents (\$.10).

History: Laws 1991, ch. 233, § 17.

60-2D-18. Penalty.

Any person who violates any of the provisions of the Bicycle Racing Act is guilty of a petty misdemeanor.

History: Laws 1991, ch. 233, § 18.

Severability. — Laws 1991, ch. 233, § 19 provided for the severability of the act if any part or application thereof is held invalid.

ARTICLE 2E

Gaming Control

Sec.

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- 60-2E-2. Policy.
- 60-2E-3. Definitions.
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- 60-2E-5. Gaming control board created.
- 60-2E-6. Board; meetings; quorum; records.
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Sec.

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- 60-2E-61. Repealed.
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- 60-2E-62. Crime; unlawful possession of gaming device.

60-2E-1. Short title.

Chapter 60, Article 2E NMSA 1978 may be cited as the "Gaming Control Act".

History: Laws 1997, ch. 190, § 3; 2002, ch. 102, § 2.

Cross references. — For the Indian Gaming Compact, see 11-13-1 NMSA 1978 et seq.

For criminal offenses relating to gambling, see 30-19-1 NMSA 1978 et seq.

The 2002 amendment, effective March 5, 2002, substituted "Chapter 60, Article 2E NMSA 1978" for "Sections 3 through 63 of this act".

Indian Gaming Compacts approved. — The Secretary of the Interior, through the Assistant Secretary for Indian Affairs, published in the August 29, 1997, Federal Register (62 FR 45867) notice of Indian Gaming Compacts, executed on July 9, 1997, between the State of New Mexico and the following tribes and pueblos: the Mescalero Apache Tribe, Pueblo of San Felipe, Pueblo of Pojoaque, Pueblo of Tesuque, Pueblo of Laguna, Pueblo of Santa Clara, Pueblo of Sandia, Pueblo of Taos, Pueblo of Acoma and Pueblo of Isleta. Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1998 (25 U.S.C. § 2710), these compacts are considered approved, effective August 29, 1997, but only to the extent they are consistent with the provisions of that act.

The Secretary of the Interior, through the Assistant Secretary for Indian Affairs, published in the October 15, 1997, Federal Register (62 FR 53650) notice of an Indian Gaming Compact between the State of New Mexico and the Pueblo of San Juan, executed on July 11, 1997.

Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1998 (25 U.S.C. § 2710), these compacts are considered approved, effective October 15, 1997, but only to the extent they are consistent with the provisions of that act.

The Secretary of the Interior, through the Assistant Secretary for Indian Affairs, published in the November 5, 1997, Federal Register (62 FR 53650) notice of Indian Gaming Compacts, executed on August 20, 1997, between the State of New Mexico and the following tribes and pueblos: Pueblo of Picuris, Pueblo of Santa Ana, and the Jicarilla Apache Tribe, and an Indian Gaming Compact between the State of New Mexico and the Pueblo of Nambe, executed on September 5, 1997. Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1998 (25 U.S.C. § 2710), these compacts are considered approved, effective August 29, 1997, but only to the extent they are consistent with the provisions of that act.

ANNOTATIONS

Prospective application of amendments. — Because the amendments to the Gaming Control Act are silent as to whether they apply retroactively, the amendments only had prospective application. *State ex rel. N.M. Gaming Control Bd. v. Ten (10) Gaming Devices*, 2005-NMCA-117, 138 N.M. 426, 120 P.3d 848, cert. quashed, 2006-NMCERT-003, 139 N.M. 352, 132 P.3d 1058.

60-2E-2. Policy.

It is the state's policy on gaming that:

A. limited gaming activities should be allowed in the state if those activities are strictly regulated to ensure honest and competitive gaming that is free from criminal and corruptive elements and influences; and

B. the holder of any license issued by the state in connection with the regulation of gaming activities has a revocable privilege only and has no property right or vested interest in the license.

History: Laws 1997, ch. 190, § 4.

60-2E-3. Definitions.

As used in the Gaming Control Act:

A. "affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person;

B. "affiliated company" means a company that:

(1) controls, is controlled by or is under common control with a company licensee; and

(2) is involved in gaming activities or involved in the ownership of property on which gaming is conducted;

C. "applicant" means a person who has applied for a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act;

D. "application" means a request for the issuance of a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act, but "application" does not include a supplemental form or information that may be required with the application;

E. "associated equipment" means equipment or a mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming activity;

F. "board" means the gaming control board;

G. "certification" means a notice of approval by the board of a person required to be certified by the board;

H. "cheat" or "cheating" means to alter the element of chance, the method of selection or other criteria in a manner that determines:

(1) the result of the game;

(2) the amount or frequency of payment in a game, including taking advantage of a malfunctioning machine;

(3) the value of a wagering instrument; or

(4) the value of a wagering credit;

I. "company" means a corporation, partnership, limited partnership, trust, association, joint stock company, joint venture, limited liability company or other form of business organization that is not a natural person; "company" does not mean a nonprofit organization;

J. "distributor" means a person who supplies gaming devices to a gaming operator but does not manufacture gaming devices;

K. "equity security" means an interest in a company that is evidenced by:

(1) voting stock or similar security;

(2) a security convertible into voting stock or similar security, with or without consideration, or a security carrying a warrant or right to subscribe to or purchase voting stock or similar security;

(3) a warrant or right to subscribe to or purchase voting stock or similar security; or

(4) a security having a direct or indirect participation in the profits of the issuer;

L. "executive director" means the chief administrative officer appointed by the board pursuant to Section 60-2E-7 NMSA 1978;

M. "finding of suitability" means a certification of approval issued by the board permitting a person to be involved directly or indirectly with a licensee, relating only to the specified involvement for which it is made;

N. "foreign institutional investor" means:

(1) a government-related pension plan of a foreign government; or

(2) a person that meets the requirement of a qualified institutional buyer as defined by the governing financial regulatory agency of the foreign country in which the company's primary operations are located and is registered or licensed in that country as a bank, an insurance company, an investment company, an investment advisor, a collective trust fund, an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board or a group composed entirely of entities specified in this subsection;

O. "game" means an activity in which, upon payment of consideration, a player receives a prize or other thing of value, the award of which is determined by chance even though accompanied by some skill; "game" does not include an activity played in a private residence in which no person makes money for operating the activity except through winnings as a player;

P. "gaming" means offering a game for play;

Q. "gaming activity" means an endeavor associated with the manufacture or distribution of gaming devices or the conduct of gaming;

R. "gaming device" means associated equipment or a gaming machine and includes a system for processing information that can alter the normal criteria of random selection that affects the operation of a game or determines the outcome of a game;

S. "gaming employee" means a person connected directly with a gaming activity; "gaming employee" does not include:

(1) bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;

(2) secretarial or janitorial personnel;

(3) stage, sound and light technicians; or

(4) other nongaming personnel;

T. "gaming establishment" means the premises on or in which gaming is conducted;

U. "gaming machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any

consideration, is available to play or operate a game, whether the payoff is made automatically from the machine or in any other manner;

V. "gaming operator" means a person who conducts gaming;

W. "holding company" means a company that directly or indirectly owns or has the power or right to control a company that is an applicant or licensee, but a company that does not have a beneficial ownership of more than ten percent of the equity securities of a publicly traded corporation is not a holding company;

X. "immediate family" means natural persons who are related to a specified natural person by affinity or consanguinity in the first through the third degree;

Y. "independent administrator" means a person who administers an annuity, who is not associated in any manner with the gaming operator licensee for which the annuity was purchased and is in no way associated with the person who will be receiving the annuity;

Z. "institutional investor" means:

(1) a foreign institutional investor;

(2) a state or federal government pension plan; or

(3) a person that meets the requirements of a qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, and is:

(a) a bank as defined in Section 3(a)(6) of the federal Securities Exchange Act of 1934;

(b) an insurance company as defined in Section 2(a)(17) of the federal Investment Company Act of 1940;

(c) an investment company registered under Section 8 of the federal Investment Company Act of 1940;

(d) an investment adviser registered under Section 203 of the federal Investment Advisers Act of 1940; or

(e) collective trust funds as defined in Section 3(c)(11) of the federal Investment Company Act of 1940;

(f) an employee benefit plan or pension fund that is subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board; or

(g) a group comprised entirely of persons specified in Subparagraphs (a) through (f) of this paragraph;

AA. "intermediary company" means a company that:

(1) is a holding company with respect to a company that is an applicant or licensee; and

(2) is a subsidiary with respect to any holding company;

BB. "key executive" means an executive of a licensee or other person having the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or whose compensation exceeds an amount established by the board in a rule;

CC. "license" means an authorization required by the board for engaging in gaming activities;

DD. "licensee" means a person to whom a valid license has been issued;

EE. "manufacturer" means a person who manufactures, fabricates, assembles, produces, programs or makes modifications to any gaming device for use or play in New Mexico or for sale, lease or distribution outside New Mexico from any location within New Mexico;

FF. "net take" means the total of the following, less the total of all cash paid out as losses to winning patrons and those amounts paid to purchase annuities to fund losses paid to winning patrons over several years by independent administrators:

(1) cash received from patrons for playing a game;

(2) cash received in payment for credit extended by a licensee to a patron for playing a game; and

(3) compensation received for conducting a game in which the licensee is not a party to a wager;

GG. "nonprofit organization" means:

(1) a bona fide chartered or incorporated branch, lodge, order or association, in existence in New Mexico prior to January 1, 1997, of a fraternal organization that is described in Section 501(c)(8) or (10) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code; or

(2) a bona fide chartered or incorporated post, auxiliary unit or society of, or a trust or foundation for the post or auxiliary unit, in existence in New Mexico prior to January 1, 1997, of a veterans' organization that is described in Section 501(c)(19) or (23) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code;

HH. "person" means a legal entity;

II. "premises" means land, together with all buildings, improvements and personal property located on the land;

JJ. "progressive jackpot" means a prize that increases over time or as gaming machines that are linked to a progressive system are played and upon conditions established by the board may be paid by an annuity;

KK. "public post-secondary educational institution" means an institution designated in Article 12, Section 11 of the constitution of New Mexico or an institution designated in Chapter 21, Article 13, 14 or 16 NMSA 1978;

LL. "progressive system" means one or more gaming machines linked to one or more common progressive jackpots;

MM. "publicly traded corporation" means a corporation that:

(1) has one or more classes of securities registered pursuant to the securities laws of the United States or New Mexico;

(2) is an issuer subject to the securities laws of the United States or New Mexico; or

(3) has one or more classes of securities registered or is an issuer pursuant to applicable foreign laws that, the board finds, provide protection for institutional investors that is comparable to or greater than the stricter of the securities laws of the United States or New Mexico;

NN. "registration" means a board action that authorizes a company to be a holding company with respect to a company that holds or applies for a license or that relates to other persons required to be registered pursuant to the Gaming Control Act;

OO. "subsidiary" means a company, all or a part of whose outstanding equity securities are owned, subject to a power or right of control or held, with power to vote, by a holding company or intermediary company;

PP. "technician" means a person approved by the board to repair and service gaming devices or associated equipment but who is prohibited from programming gaming devices; and

QQ. "work permit" means a card, certificate or permit issued by the board, whether denominated as a work permit, registration card or otherwise, authorizing the employment of the holder as a gaming employee.

History: Laws 1997, ch. 190, § 5; 1999, ch. 251, § 1; 2002, ch. 102, § 3; 2007, ch. 217, § 1; 2009, ch. 199, § 1.

Cross references. — For the federal Securities Act of 1933, see 15 U.S.C.S. § 77a et seq.

For Section 3(a)(6) of the federal Securities Exchange Act of 1934, see 15 U.S.C.S. § 78c(a)(6).

For Section 2(a)(17) of the federal Investment Company Act of 1940, see 15 U.S.C.S. § 80a-2(a)(17). For Section 3(c)(11) of the Investment Company Act, see 15 U.S.C.S. § 80a-3(c)(11). For Section 8 of the Investment Company Act, see 15 U.S.C.S. § 80a-8.

For Section 203 of the federal Investment Advisers Act of 1940, see 15 U.S.C.S. § 80b-3.

For the federal Employee Retirement Income Security Act of 1974 (ERISA), see 29 U.S.C.S. § 1001 et seq.

For Section 501 of the federal Internal Revenue Code, see 26 U.S.C.S. § 501.

The 2009 amendment, effective June 19, 2009, added Subsections H and N; added Paragraph (1) of Subsection Z; and in Paragraph (g) of Subsection Z, after "person specified in", deleted "Paragraphs (1) through (6) of this subsection" and added "Subparagraphs (a) through (f) of this paragraph".

The 2007 amendment, effective April 2, 2007, eliminated the definition of "certified technician" as a person

certified by a manufacturer to repair and service gaming devices and added the definition of "technician" in Subsection NN.

The 2002 amendment, effective March 5, 2002, deleted "gaming device" does not include a system or device that affects a game solely by stopping its operation so that the outcome remains undetermined" at the end of Subsection Q; added Subsection JJ, and redesignated former Subsections JJ to NN as present Subsections KK to OO.

The 1999 amendment, effective June 18, 1999, inserted "company does not mean a nonprofit organization" in Subsection I, substituted "Section 60-2E-7 NMSA 1978" for "Section 9 of the Gaming Control Act" in Subsection L, and substituted "rule" for "regulation" in Subsection AA.

ANNOTATIONS

Slot machines in private home not to be considered as a "gaming machine" to make them subject to the act. *State ex rel. N.M. Gaming Control Bd. v. Ten (10) Gaming Devices*, 2005-NMCA-117, 138 N.M. 426, 120 P.3d 848, cert. quashed, 2006-NMCERT-003, 139 N.M. 352, 132 P.3d 1038.

60-2E-4. Limited gaming activity permitted.

Gaming activity is permitted in New Mexico only if it is conducted in compliance with and pursuant to:

- A. the Gaming Control Act; or
- B. a state or federal law other than the Gaming Control Act that expressly permits the activity or exempts it from the application of the state criminal law, or both.

History: Laws 1997, ch. 190, § 6.

60-2E-5. Gaming control board created.

A. The "gaming control board" is created and consists of five members. Four members are appointed by the governor with the advice and consent of the senate, and one ex-officio member is the chairman of the state racing commission. All members of the board shall be residents of New Mexico and citizens of the United States. One appointed member of the board shall have a minimum of five years of previous employment in a supervisory and administrative position in a law enforcement agency; one appointed member of the board shall be a certified public accountant in New Mexico who has had at least five years of experience in public accountancy; one appointed member of the board shall be an attorney who has been admitted to practice before the supreme court of New Mexico; and one appointed member of the board shall be a public member who has knowledge and experience in business management and financing.

B. The appointed members of the board shall be appointed for terms of five years, except, of the members who are first appointed, the member with law enforcement experience shall be appointed for a term of five years; the member who is a certified public accountant shall be appointed for a term of four years; the member who is an attorney shall be appointed for a term of three years; and the public member shall be appointed for a term of two years. Thereafter, all members shall be appointed for terms of five years. No person shall serve as a board member for more than two consecutive terms or ten years total.

C. No full-time board member who receives a salary pursuant to Subsection G of this section may be employed in any other capacity or shall in any manner receive compensation for services rendered to any person or entity other than the board while a member of the board.

D. A vacancy on the board of an appointed member shall be filled within thirty days by the governor with the advice and consent of the senate for the unexpired portion of the term in which the vacancy occurs. A person appointed to fill a vacancy shall meet all qualification requirements of the office established in this section.

E. The governor shall choose a chairman annually from the board's appointed full-time, salaried members.

F. No more than three members of the board shall be from the same political party.

G. The law enforcement, certified public accountant and attorney members of the board shall be full-time state officials and shall receive a salary set by the governor. The public member and ex-officio member of the board shall not receive salaries for their work for the board. All appointed members of the board shall receive per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 NMSA 1978].

H. The department of public safety shall conduct background investigations of all members of the board prior to confirmation by the senate. To assist the department in the background investigation, a prospective board member shall furnish a disclosure statement to the department on a form provided by the department containing that information deemed by the department as necessary for completion of a detailed and thorough background investigation. The required information shall include at least:

(1) a full set of fingerprints made by a law enforcement agency on forms supplied by the department;

(2) complete information and details with respect to the prospective board member's antecedents, habits, immediate family, character, criminal record, business activities, financial affairs

and business associates covering at least a ten-year period immediately preceding the date of submitting the disclosure statement;

(3) complete disclosure of any equity interest held by the prospective board member or a member of his immediate family in a company that is an applicant or licensee or an affiliate, affiliated company, intermediary company or holding company in respect to an applicant or licensee; and

(4) the names and addresses of members of the immediate family of the prospective board member.

I. No person may be appointed or confirmed as a member of the board if that person or member of his immediate family holds an equity interest in a company that is an applicant or licensee or an affiliate, affiliated company, intermediary company or holding company in respect to an applicant or licensee.

J. A prospective board member shall provide assistance and information requested by the department of public safety or the governor and shall cooperate in any inquiry or investigation of the prospective board member's fitness or qualifications to hold the office to which he is appointed. The senate shall not confirm a prospective board member if it has reasonable cause to believe that the prospective board member has:

(1) knowingly misrepresented or omitted a material fact required in a disclosure statement;

(2) been convicted of a felony, a gaming related offense or a crime involving fraud, theft or moral turpitude within ten years immediately preceding the date of submitting a disclosure statement required pursuant to the provisions of Subsection H of this section;

(3) exhibited a history of willful disregard for the gaming laws of this or any other state or the United States; or

(4) had a permit or license issued pursuant to the gaming laws of this or any other state or the United States permanently suspended or revoked for cause.

K. At the time of taking office, each board member shall file with the secretary of state a sworn statement that he is not disqualified under the provisions of Subsection I of this section.

History: Laws 1997, ch. 190, § 7; 2002, ch. 103, § 1.

The 2002 amendment, effective March 5, 2002, in Subsection A, substituted "Four" for "Three" and "one ex-officio member is" for "two members are ex-officio" and deleted "and the chairman of the board of the New Mexico lottery authority" following "commission" in the second sentence, and added the clause regarding the public

member in the last sentence; added the clause regarding the public member at the end of Subsection B; added the second and third sentences in Subsection G; and inserted language distinguishing the full-time, salaried members from the unsalaried public and ex-officio members in Subsections C, E, and G.

60-2E-6. Board; meetings; quorum; records.

A. A majority of the qualified membership of the board then in office constitutes a quorum. No action may be taken by the board unless at least three members concur.

B. Written notice of the time and place of each board meeting shall be given to each member of the board at least ten days prior to the meeting.

C. Meetings of the board shall be open and public in accordance with the Open Meetings Act [10-15-1.1 NMSA 1978], except that the board may close a meeting to hear confidential security and investigative information and other information made confidential by the provisions of the Gaming Control Act.

D. All proceedings of the board shall be recorded by audiotape or other equivalent verbatim audio recording device.

E. The chairman of the board, the executive director or a majority of the members of the board then in office may call a special meeting of the board upon at least five days' prior written notice to all members of the board and the executive director.

History: Laws 1997, ch. 190, § 8.

60-2E-7. Board's powers and duties.

A. The board shall implement the state's policy on gaming consistent with the provisions of the Gaming Control Act and the New Mexico Bingo and Raffle Act [60-2F-1 NMSA 1978]. It has the duty to fulfill all responsibilities assigned to it pursuant to those acts, and it has all authority necessary to carry out those responsibilities. It may delegate authority to the executive director, but it retains accountability. The board is an adjunct agency.

B. The board shall:

- (1) employ the executive director;
- (2) make the final decision on issuance, denial, suspension and revocation of all licenses pursuant to and consistent with the provisions of the Gaming Control Act and the New Mexico Bingo and Raffle Act;
- (3) develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act and the New Mexico Bingo and Raffle Act;
- (4) conduct itself, or employ a hearing officer to conduct, all hearings required by the provisions of the Gaming Control Act and other hearings it deems appropriate to fulfill its responsibilities;
- (5) meet at least once each month; and
- (6) prepare and submit an annual report in December of each year to the governor and the legislature, covering activities of the board in the most recently completed fiscal year, a summary of gaming activities in the state and any recommended changes in or additions to the laws relating to gaming in the state.

C. The board may:

- (1) impose civil fines not to exceed twenty-five thousand dollars (\$25,000) for the first violation of any prohibitory provision of the Gaming Control Act or any prohibitory provision of a regulation adopted pursuant to that act and fifty thousand dollars (\$50,000) for subsequent violations;
- (2) conduct investigations;
- (3) subpoena persons and documents to compel access to or the production of documents and records, including books and memoranda, in the custody or control of a licensee;
- (4) compel the appearance of employees of a licensee or persons for the purpose of ascertaining compliance with provisions of the Gaming Control Act or a regulation adopted pursuant to its provisions;
- (5) administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition were pursuant to discovery rules in a civil action in the district court;
- (6) sue and be sued subject to the limitations of the Tort Claims Act [41-4-1 NMSA 1978];
- (7) contract for the provision of goods and services necessary to carry out its responsibilities;
- (8) conduct audits, relevant to their gaming activities, of applicants, licensees and persons affiliated with licensees;
- (9) inspect, examine, photocopy and audit all documents and records of an applicant or licensee relevant to the applicant's or licensee's gaming activities in the presence of the applicant or licensee or the applicant's or licensee's agent;
- (10) require verification of income and all other matters pertinent to the gaming activities of an applicant or licensee affecting the enforcement of any provision of the Gaming Control Act;
- (11) inspect all places where gaming activities are conducted and inspect all property connected with gaming in those places;
- (12) summarily seize, remove and impound from places inspected any gaming devices, property connected with gaming, documents or records for the purpose of examination or inspection;
- (13) inspect, examine, photocopy and audit documents and records, relevant to the affiliate's gaming activities, of an affiliate of an applicant or licensee that the board knows or reasonably suspects is involved in the financing, operation or management of the applicant or licensee. The inspection, examination, photocopying and audit shall be in the presence of a representative of the affiliate or its agent when practicable;
- (14) conduct background investigations pursuant to the Horse Racing Act [60-1A-1 NMSA 1978]; and

(15) except for the powers specified in Paragraphs (1) and (4) of this subsection, carry out all or part of the foregoing powers and activities through the executive director.

D. The board shall monitor all activity authorized in an Indian gaming compact between the state and an Indian nation, tribe or pueblo. The board shall appoint the state gaming representative for the purposes of the compact.

History: Laws 1997, ch. 190, § 9; 2001, ch. 262, § 1; 2002, ch. 102, § 4; 2005, ch. 349, § 6; 2007, ch. 39, § 30; 2009, ch. 81, § 28.

The 2009 amendment, effective July 1, 2009, in Subsections A and Paragraphs (2) and (3) of Subsection B, changed "Bingo and Raffle Act" to "New Mexico Bingo and Raffle Act"; and in Paragraph (1) of Subsection C, after "first violation", added "of any prohibitory provision of the Gaming Control Act of any prohibitory provision of a regulation adopted pursuant to that act" and at the end of the sentence, deleted "or any prohibitory provision of the Gaming Control Act or any prohibitory provision of a regulation adopted pursuant to that act".

The 2007 amendment, effective July 1, 2007, added Paragraph (14) of Subsection C requiring the gaming

control board to conduct background investigations pursuant to the Horse Racing Act.

The 2005 amendment, effective June 17, 2005, added the reference to the Bingo and Raffle Act in Subsections A and B(2) and (3).

The 2002 amendment, effective March 5, 2002, purported to amend this section but, following a committee amendment to the introduced bill, made no change.

The 2001 amendment, effective June 15, 2001, inserted "relevant to their gaming activities" in Paragraph C(8); and substituted "audit documents and records, relevant to his gaming activities" for "audit all documents and records" in Paragraph C(13).

60-2E-8. Board regulations; discretionary regulations; procedure; required provisions.

A. The board may adopt any regulation:

- (1) consistent with the provisions of the Gaming Control Act; and
- (2) it decides is necessary to implement the provisions of the Gaming Control Act.

B. No regulation shall be adopted, amended or repealed without a public hearing on the proposed action before the board or a hearing officer designated by it. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, amendment or repeal may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All regulations and actions taken on regulations shall be filed in accordance with the State Rules Act [14-4-1 NMSA 1978].

C. The board shall adopt regulations:

- (1) prescribing the method and form of application to be followed by an applicant;
- (2) prescribing the information to be furnished by an applicant or licensee concerning the applicant's or licensee's antecedents, immediate family, habits, character, associates, criminal record, business activities and financial affairs, past or present;
- (3) prescribing the manner and procedure of all hearings conducted by the board or a hearing officer;
- (4) prescribing the manner and method of collection and payment of fees;
- (5) prescribing the manner and method of the issuance of licenses, permits, registrations, certificates and other actions of the board not elsewhere prescribed in the Gaming Control Act;
- (6) defining the area, games and gaming devices allowed and the methods of operation of the games and gaming devices for authorized gaming;
- (7) prescribing under what conditions the nonpayment of winnings is grounds for suspension or revocation of a license of a gaming operator;
- (8) governing the manufacture, sale, distribution, repair and servicing of gaming devices;
- (9) prescribing accounting procedures, security, collection and verification procedures required of licensees and matters regarding financial responsibility of licensees;
- (10) prescribing what shall be considered to be an unsuitable method of operating gaming activities;

(11) restricting access to confidential information obtained pursuant to the provisions of the Gaming Control Act and ensuring that the confidentiality of that information is maintained and protected;

(12) prescribing financial reporting and internal control requirements for licensees;

(13) prescribing the manner in which winnings, compensation from gaming activities and net take shall be computed and reported by a gaming operator licensee;

(14) prescribing the frequency of and the matters to be contained in audits of and periodic financial reports relevant to the gaming operator licensee's gaming activities from a gaming operator licensee consistent with standards prescribed by the board;

(15) prescribing the procedures to be followed by a gaming operator licensee for the exclusion of persons from gaming establishments;

(16) establishing criteria and conditions for the operation of progressive systems;

(17) establishing criteria and conditions for approval of procurement by the board of personal property valued in excess of twenty thousand dollars (\$20,000), including background investigation requirements for a person submitting a bid or proposal;

(18) establishing an applicant fee schedule for processing applications that is based on costs of the application review incurred by the board whether directly or through payment by the board for costs charged for investigations of applicants by state departments and agencies other than the board, which regulation shall set a maximum fee of one hundred thousand dollars (\$100,000); and

(19) establishing criteria and conditions for allowing temporary possession of gaming devices:

- (a) by post-secondary educational institutions;
- (b) for trade shows;
- (c) for film or theater productions; or
- (d) for other non-gaming purposes.

History: Laws 1997, ch. 190, § 10; 2001, ch. 262, § 2; 2002, ch. 102, § 5; 2009, ch. 199, § 2.

The 2009 amendment, effective June 19, 2009, added Subparagraphs (c) and (d) of Paragraph (19) of Subsection C.

The 2002 amendment, effective March 5, 2002, deleted the former second sentence of Subsection B, which

read "The public hearing shall be held in Santa Fe"; and added Subsection C(19).

The 2001 amendment, effective June 15, 2001, inserted "relevant to his gaming activities" in Paragraph C(14).

60-2E-9. Executive director; employment; qualifications.

A. The executive director shall be employed by, report directly to and serve at the pleasure of the board.

B. The executive director shall have had at least five years of responsible supervisory administrative experience in a governmental gaming regulatory agency.

C. The executive director shall receive an annual salary to be set by the board but not to exceed the governor of New Mexico's salary.

History: Laws 1997, ch. 190, § 11; 2007, ch. 271, § 1.

Cross references. — For the salary of the governor, see 8-1-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, provided that the salary of the executive director shall not exceed the governor's salary.

60-2E-10. Executive director; powers; duties.

A. The executive director shall implement the policies of the board.

B. The executive director shall employ all personnel who work for the board. The employees shall be covered employees pursuant to the provisions of the Personnel Act [10-9-1 NMSA 1978]. Among those personnel, he shall employ and designate an appropriate number of individuals as law enforcement officers subject to proper certification pursuant to the Law Enforcement Training Act [29-7-1 NMSA 1978].

C. The executive director shall establish organizational units he determines are appropriate to administer the provisions of the Gaming Control Act.

D. The executive director:

- (1) may delegate authority to subordinates as he deems necessary and appropriate, clearly delineating the delegated authority and the limitations on it, if any;
- (2) shall take administrative action by issuing orders and instructions consistent with the Gaming Control Act and regulations of the board to assure implementation of and compliance with the provisions of that act and those regulations;
- (3) may issue administrative citations to any licensee upon a reasonable belief that the licensee has violated or is violating any provision of the Gaming Control Act or regulations of the board;
- (4) may conduct research and studies that will improve the operations of the board and the provision of services to the citizens of the state;
- (5) may provide courses of instruction and practical training for employees of the board and other persons involved in the activities regulated by the board with the objectives of improving operations of the board and achieving compliance with the law and regulations;
- (6) shall prepare an annual budget for the board and submit it to the board for approval; and
- (7) shall make recommendations to the board of proposed regulations and any legislative changes needed to provide better administration of the Gaming Control Act and fair and efficient regulation of gaming activities in the state.

History: Laws 1997, ch. 190, § 12; 2002, ch. 102, § 6.

The 2002 amendment, effective March 5, 2002, in Subsection D, added present Paragraph (3) and redesignated the remaining paragraphs accordingly.

60-2E-11. Investigation of executive director candidates and employees.

A. A person who is under consideration in the final selection process for appointment as the executive director shall file a disclosure statement pursuant to the requirements of this section, and the board shall not make an appointment of a person as executive director until a background investigation is completed by the department of public safety and a report is made to the board.

B. A person who has reached the final selection process for employment by the executive director shall file a disclosure statement pursuant to the requirements of this section if the executive director or the board has directed the person do so. The person shall not be further considered for employment until a background investigation is completed by the board's law enforcement officers and a report is made to the executive director.

C. Forms for the disclosure statements required by this section shall be developed by the board in cooperation with the department of public safety. At least the following information shall be required of a person submitting a statement:

- (1) a full set of fingerprints made by a law enforcement agency on forms supplied by the board;
- (2) complete information and details with respect to the person's antecedents, habits, immediate family, character, criminal record, business activities and business associates, covering at least a ten-year period immediately preceding the date of submitting the disclosure statement; and
- (3) a complete description of any equity interest held in a business connected with the gaming industry.

D. In preparing an investigative report, the board's law enforcement officers may request and receive criminal history information from the federal bureau of investigation or any other law enforcement agency or organization. The board's law enforcement officers shall maintain confidentiality regarding information received from a law enforcement agency that may be imposed by the agency as a condition for providing the information to the department, except that the board's law enforcement officers may provide criminal history information and reports to licensees or tribal gaming casinos when conducting background checks on behalf of the licensee or tribal gaming casino.

E. A person required to file a disclosure statement shall provide any assistance or information requested by the department of public safety or the board and shall cooperate in any inquiry or investigation.

F. If information required to be included in a disclosure statement changes or if information is added after the statement is filed, the person required to file it shall provide that information in writing to the person requesting the investigation. The supplemental information shall be provided within thirty days after the change or addition.

G. The board shall not appoint a person as executive director, and the executive director shall not employ a person, if the board or the executive director has reasonable cause to believe that the person has:

- (1) knowingly misrepresented or omitted a material fact required in a disclosure statement;
- (2) been convicted of a felony, a gaming-related offense or a crime involving fraud, theft or moral turpitude within ten years immediately preceding the date of submitting a disclosure statement required pursuant to this section;
- (3) exhibited a history of willful disregard for the gaming laws of this or any other state or the United States; or
- (4) had a permit or license issued pursuant to the gaming laws of this or any other state or the United States permanently suspended or revoked for cause.

H. Both the board and the executive director may exercise absolute discretion in exercising their respective appointing and employing powers.

History: Laws 1997, ch. 190, § 13; 2002, ch. 102, § 7.

department of public safety" in Subsections B and D; and

The 2002 amendment, effective March 5, 2002, substituted "the board's law enforcement officers" for "the

added the exception at the end of Subsection D.

60-2E-12. Conflicts of interest; board; executive director; employees.

A. In addition to all other provisions of New Mexico law regarding conflicts of interest of state officials and employees, a member of the board, the executive director, an employee of the board or a person in the immediate family of or residing in the household of any of the foregoing persons, shall not:

- (1) directly or indirectly, as a proprietor or as a member, stockholder, director or officer of a company, have an interest in a business engaged in gaming activities in this or another jurisdiction; or
- (2) accept or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service having an aggregate value of one hundred dollars (\$100) or more in any calendar year from a licensee or applicant.

B. If a member of the board, the executive director or a person in the immediate family of or residing in the household of a member of the board or the executive director violates a provision of this section, the member of the board or executive director shall be removed from office. A board member shall be removed by the governor, and the executive director shall be removed from the executive director's position by the board.

History: Laws 1997, ch. 190, § 14; 2009, ch. 199, § 3.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "the executive director", added "an employee of the board".

60-2E-13. Activities requiring licensing.

A. A person shall not conduct gaming unless the person is licensed as a gaming operator.

B. A person shall not sell, supply or distribute a gaming device or associated equipment for use or play in this state or for use or play outside of this state from a location within this state unless the person is licensed as a distributor or manufacturer, but a gaming operator licensee may sell or trade in a gaming device or associated equipment to a gaming operator licensee, distributor licensee or manufacturer licensee.

C. Except as provided in Subsection D of this section, a person shall not manufacture, fabricate, assemble, program or make modifications to a gaming device or associated equipment for use or play in this state or for use or play outside of this state from any location within this state unless the person is a manufacturer licensee. A manufacturer licensee may sell, supply or distribute only the gaming devices or associated equipment that the manufacturer licensee manufactures, fabricates, assembles, programs or modifies.

D. Upon receiving a written request from a person who manufactures associated equipment, the board may waive the requirement for a manufacturer's license on the terms and conditions the board deems necessary as long as the waiver is consistent with the purpose of the Gaming Control Act.

E. Except as provided in Section 60-2E-13.1 NMSA 1978, a gaming operator licensee or a person other than a manufacturer licensee or distributor licensee shall not possess an unlicensed or illegal gaming device or possess or control a place where there is an unlicensed or illegal gaming device. Any unlicensed or illegal gaming device, except a gaming machine in the possession of a licensee while awaiting transfer to a gaming operator licensee for licensure of the machine, or as provided in Section 60-2E-13.1 NMSA 1978, is subject to seizure and forfeiture pursuant to Section 30-19-10 NMSA 1978.

F. A person shall not service or repair a gaming device or associated equipment unless the person is licensed as a manufacturer, is employed by a manufacturer licensee or is a technician approved by the board and employed by a distributor licensee or a gaming operator licensee.

G. A person shall not engage in an activity for which the board requires a license or permit without obtaining the license or permit.

H. Except as provided in Subsections B and D of this section, a person shall not purchase, lease or acquire possession of a gaming device or associated equipment except from a distributor licensee or manufacturer licensee.

I. A distributor licensee may receive a percentage of the amount wagered, the net take or other measure related to the operation of a gaming machine as a payment pursuant to a lease or other arrangement for furnishing a gaming machine, but the board shall adopt a regulation setting the maximum allowable percentage.

History: Laws 1997, ch. 190, § 15; 2002, ch. 102, § 8; 2007, ch. 217, § 2.

The 2007 amendment, effective April 2, 2007, required a person who services or repairs a gaming device or associated equipment to be approved by the board.

The 2002 amendment, effective March 5, 2002, inserted the exception clause at the beginning of Subsection C; added present Subsection D and redesignated the remaining subsections accordingly; and rewrote present Subsection E, inserting the references to Sections 60-2E-13.1 and 30-19-10 and to illegal gaming devices, and inserting "possess an unlicensed or illegal gaming device or" in the first sentence.

ANNOTATIONS

Slot machines in private home not to be considered as a "gaming machine" to make them subject to the act. *State ex rel. N.M. Gaming Control Bd. v. Ten (10) Gaming Devices*, 2005-NMCA-117, 138 N.M. 426, 120 P.3d 848, cert. quashed, 2006-NMCERT-003, 139 N.M. 352, 132 P.3d 1038.

Forfeiture of machine in private residence. When the exclusion in Section 60-2E-3 NMSA 1978 is asserted, the activity in the private residence at the time the slot machine is seized determines whether the machine is subject to forfeiture. *State ex rel. N.M. Gaming Control Bd. v. Ten (10) Gaming Devices*, 2005-NMCA-117, 138 N.M. 426, 120 P.3d 848, cert. quashed, 2006-NMCERT-003, 139 N.M. 352, 132 P.3d 1038.

60-2E-13.1. Temporary possession of gaming device for limited purpose.

A. A public post-secondary educational institution may temporarily possess gaming devices for the limited purpose of providing instruction on the technical aspects of gaming devices to persons seeking certification as technicians qualified to repair and maintain gaming devices. A gaming device allowed for such limited use shall be subject to registration, transport, possession and use requirements and restrictions established in board regulations.

B. Trade shows and similar events for the purpose of demonstrating and marketing gaming devices may be conducted in the state at the discretion of the board. A gaming device allowed in the state for such limited use shall be subject to registration, transport, possession and use requirements and restrictions established in board regulations.

C. A person may possess an unlicensed gaming device used by the person for the purposes of testing or demonstration if that person is a manufacturer licensee or has obtained a waiver pursuant to the Gaming Control Act.

D. A person may possess a gaming device for the purpose of film or theater productions or other non-gaming purposes permitted by regulation of the board. Any gaming device allowed in the state for such limited use shall be subject to registration, transport, possession and use requirements and restrictions established in board regulations.

History: Laws 2002, ch. 102, § 9; 2009, ch. 199, § 4.

The 2009 amendment, effective June 19, 2009, added Subsection D.

60-2E-14. Licensure; application.

A. The board shall establish and issue the following categories of licenses:

- (1) manufacturer;
- (2) distributor;
- (3) gaming operator; and
- (4) gaming machine.

B. The board shall issue certifications of findings of suitability for key executives and other persons for whom certification is required.

C. The board shall issue work permits for gaming employees.

D. A licensee shall not be issued more than one type of license, but this provision does not prohibit a licensee from owning, leasing, acquiring or having in the licensee's possession licensed gaming machines if that activity is otherwise allowed by the provisions of the Gaming Control Act. A licensee shall not own a majority interest in, manage or otherwise control a holder of another type of license issued pursuant to the provisions of that act.

E. An applicant for a license, a certification of finding of suitability or a work permit shall apply on forms provided by the board and shall furnish to the board two sets of fingerprint cards and all other information requested by the board. Submission of an application constitutes consent to a national criminal background check of the applicant, a credit check of the applicant and all persons having a substantial interest in the applicant and any other background investigations required pursuant to the Gaming Control Act or deemed necessary by the board. The board may obtain from the taxation and revenue department copies of tax returns filed by or on behalf of the applicant or its affiliates and information concerning liens imposed on the applicant or its affiliates by the taxation and revenue department.

F. All licenses issued by the board pursuant to the provisions of this section shall be reviewed for renewal annually unless revoked, suspended, canceled or terminated.

G. A license shall not be transferred or assigned.

H. The application for a license shall include:

- (1) the name of the applicant;
- (2) the location of the proposed operation;
- (3) the gaming devices to be operated, manufactured, distributed or serviced;
- (4) the names of all persons having a direct or indirect interest in the business of the applicant and the nature of such interest; and
- (5) such other information and details as the board may require.

I. The board shall furnish to the applicant supplemental forms that the applicant shall complete and file with the application. The supplemental forms shall require two sets of fingerprint cards and complete information and details with respect to the applicant's antecedents, habits, immediate family, character, state and federal criminal records, business activities, financial affairs and business associates, covering at least a ten-year period immediately preceding the date of filing of the application.

J. In conducting a background investigation and preparing an investigative report on the applicant, the board's law enforcement officers may request and receive criminal history information from the federal bureau of investigation or any other law enforcement agency or organization. The board's law enforcement officers shall maintain confidentiality regarding information received

from a law enforcement agency that may be imposed by the agency as a condition for providing the information to the board.

History: Laws 1997, ch. 190, § 16; 2002, ch. 102, § 10; 2007, ch. 39, § 31.

The 2007 amendment, effective March 15, 2007, in Subsection E, provided that an applicant for a license, a certification of finding of suitability or a work permit shall apply on forms provided by the board, that an applicant shall furnish to the board two sets of fingerprint cards,

and that submission of an application constitutes consent to a national criminal background check of the applicant; in Subsection I, provided that the supplemental forms shall require two sets of fingerprint cards; and added Subsection J.

The 2002 amendment, effective March 5, 2002, added the last sentence in Subsection E.

60-2E-15. License, certification and work permit fees.

A. License and other fees shall be established by board regulation but shall not exceed the following amounts:

- (1) manufacturer's license, twenty thousand dollars (\$20,000) for the initial license and five thousand dollars (\$5,000) for annual renewal;
- (2) distributor's license, ten thousand dollars (\$10,000) for the initial license and one thousand dollars (\$1,000) for annual renewal;
- (3) gaming operator's license for a racetrack, fifty thousand dollars (\$50,000) for the initial license and ten thousand dollars (\$10,000) for annual renewal;
- (4) gaming operator's license for a nonprofit organization, one thousand dollars (\$1,000) for the initial license and two hundred dollars (\$200) for annual renewal;
- (5) for each separate gaming machine licensed to a person holding an operator's license, five hundred dollars (\$500) for the initial license and one hundred dollars (\$100) for annual renewal; and
- (6) work permit, one hundred dollars (\$100) annually.

B. The board shall establish the fee for certifications or other actions by regulation, but no fee established by the board shall exceed one thousand dollars (\$1,000), except for fees established pursuant to Paragraph (18) of Subsection C of Section 10 [60-2E-8 NMSA 1978] of the Gaming Control Act.

C. All license, certification or work permit fees shall be paid to the board at the time and in the manner established by regulations of the board.

History: Laws 1997, ch. 190, § 17.

60-2E-16. Action by board on applications.

A. A person that the board determines is qualified to receive a license pursuant to the provisions of the Gaming Control Act may be issued a license. The burden of proving qualifications is on the applicant.

B. A license shall not be issued unless the board is satisfied that the applicant is:

- (1) a person of good moral character, honesty and integrity;
- (2) a person whose prior activities, state and federal criminal records, reputation, habits and associations do not pose a threat to the public interest or to the effective regulation and control of gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; and

- (3) in all other respects qualified to be licensed consistent with the laws of this state.

C. A license shall not be issued unless the applicant has satisfied the board that:

- (1) the applicant has adequate business probity, competence and experience in business and gaming;
- (2) the proposed financing of the applicant is adequate for the nature of the proposed license and from a suitable source; any lender or other source of money or credit that the board finds does not meet the standards set forth in Subsection B of this section shall be deemed unsuitable; and

(3) the applicant is sufficiently capitalized under standards set by the board to conduct the business covered by the license.

D. An application to receive a license, certification or work permit constitutes a request for a determination of the applicant's general moral character, integrity and ability to participate or engage in or be associated with gaming. Any written or oral statement made in the course of an official proceeding of the board or by a witness testifying under oath that is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

E. The board shall not issue a license or certification to an applicant who has previously been denied a license or certification in this state or another state, who has had a certification, permit or license issued pursuant to the gaming laws of a state or the United States permanently suspended or revoked for cause or who is currently under suspension or subject to any other limiting action in this state or another state involving gaming activities or licensure for gaming activities, unless the violation that is the basis of the denial, permanent suspension or other limiting action regarding a license, certification or permit applied for or issued in this state or another state is determined by the board to be a technical violation, and, if the board finds the violation to be a technical violation, the board may choose to issue a license or certification.

F. The board shall investigate the qualifications of each applicant before a license, certification or work permit is issued by the board and shall continue to observe and monitor the conduct of all licensees, work permit holders, persons certified as being suitable and the persons having a material involvement directly or indirectly with a licensee.

G. The board has the authority to deny an application or limit, condition, restrict, revoke or suspend a license, certification or permit for any cause.

H. After issuance, a license, certification or permit shall continue in effect upon proper payment of the initial and renewal fees, subject to the power of the board to revoke, suspend, condition or limit licenses, certifications and permits.

I. The board has full and absolute power and authority to deny an application for any cause it deems reasonable. If an application is denied, the board shall prepare and file its written decision on which its order denying the application is based.

History: Laws 1997, ch. 190, § 18; 2007, ch. 39, § 32; 2009, ch. 199, § 5.

The 2009 amendment, effective June 19, 2009, in Subsection E, after "licensure for gaming activities" added the remainder of the sentence.

The 2007 amendment, effective March 15, 2007, in Paragraph (2) of Subsection B, changed "criminal record" to "state and federal criminal records".

60-2E-17. Investigation for licenses, certifications and permits.

The board shall initiate an investigation of the applicant within thirty days after an application is filed and supplemental information that the board may require is received.

History: Laws 1997, ch. 190, § 19.

60-2E-18. Eligibility requirements for companies.

In order to be eligible to receive a license, a company shall:

A. be incorporated or otherwise organized and in good standing in this state or incorporated or otherwise organized in another state, qualified to do business in this state and in good standing in this state and in the state of incorporation;

B. comply with all of the requirements of the laws of this state pertaining to the company;

C. maintain a ledger in the principal office of the company in this state, which shall:

(1) at all times reflect the ownership according to company records of every class of security issued by the company; and

(2) be available for inspection by the board at all reasonable times without notice; and

D. file notice of all changes of ownership of all classes of securities issued by the company with the board within thirty days of the change.

History: Laws 1997, ch. 190, § 20.

60-2E-19. Company applicants; nonprofit organization applicants; required information.

A. A company applicant for a license or a renewal of a license shall provide the following information to the board on forms provided by the board:

- (1) the organization, financial structure and nature of the business to be operated, including the names and personal histories of all officers, directors and key executives;
- (2) the rights and privileges acquired by the holders of different classes of authorized securities;
- (3) the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;
- (4) remuneration to persons, other than directors, officers and key executives, exceeding one hundred thousand dollars (\$100,000) per year;
- (5) bonus and profit-sharing arrangements within the company;
- (6) a list of management and service contracts pertaining to the proposed gaming activity in this state;
- (7) balance sheets and profit and loss statements for at least the three preceding fiscal years, or, if the company has not been in business for a period of three years, balance sheets and profit and loss statements from the time of its commencement of business operations and projected for three years from the time of its commencement of business operations. All balance sheets and profit and loss statements shall be audited by independent certified public accountants; and
- (8) any further financial data that the board deems necessary or appropriate.

B. A nonprofit organization applying for a license or a renewal of a license as a nonprofit gaming operator pursuant to the Gaming Control Act shall provide in its application:

- (1) the organization, financial structure and nature of the nonprofit organization, including the names of all officers, directors and key executives;
- (2) the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;
- (3) management and service contracts pertaining to the proposed gaming activity in this state;
- (4) balance and profit and loss statements for at least the three preceding fiscal years or, if the nonprofit organization has not been in business for a period of three years, balance sheets and profit and loss statements from the date of charter or incorporation and projected for three years from the date of charter or incorporation. All balance sheets and profit and loss statements shall be submitted in a manner prescribed by the board;
- (5) any further financial data that the board deems necessary or appropriate;
- (6) if the nonprofit organization has various classes of members, information detailing the rights and privileges attributed to each class of member and providing the number of members in each class;
- (7) the level of remuneration for all paid employees of the nonprofit organization; and
- (8) details about any other form of remuneration or awards that are conferred on members.

History: Laws 1997, ch. 190, § 21; 1999, ch. 251, § 2; 2009, ch. 199, § 8.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "A company applicant", added "for a license or a renewal of a license"; in Paragraph (4) of Subsection

A, changed "fifty thousand dollars (\$50,000)" to "one hundred thousand dollars (\$100,000)"; in Paragraph (6) of Subsection A, at the beginning of the sentence, added "a list of"; in Paragraph (7) of Subsection A, in the last sentence, after "loss statements shall be", deleted "certified" and added "audited"; in Subsection B, after "applying for a license", added "or a renewal of a license"; and in

Paragraph (4) of Subsection B, in the last sentence, after "loss statements shall be", deleted "certified by independent certified public accountants" and added "submitted in a manner prescribed by the board".

The 1999 amendment, effective June 18, 1999, redesignated former Subsections A through G as Subsections A(1) through A(7) and added Subsections A(8) and B.

60-2E-20. Individual certification of finding of suitability of officers, directors and other persons.

A. An officer, director, equity security holder of five percent or more, partner, general partner, limited partner, trustee or beneficiary of the company that holds or has applied for a license shall individually apply for and obtain a certification of finding of suitability, according to the provisions of the Gaming Control Act, and if, in the judgment of the board the public interest is served by requiring any or all of the company's key executives to apply for and obtain a certification of finding of suitability, the company shall require those persons to apply for certification. A person who is required to be certified pursuant to this subsection shall apply for certification within thirty days after becoming an officer, director, equity security holder of five percent or more, partner, general partner, limited partner of five percent or more, trustee, beneficiary or key executive. A person who is required to be certified pursuant to a decision of the board shall apply for certification within thirty days after the board so requests. A person required or requested to be certified pursuant to this subsection shall provide to the board an application for certification, including a personal history, a financial statement, copies of the person's income tax returns for the three years immediately prior to the year of the application and other information that the board deems necessary or appropriate.

B. The key executives of a nonprofit organization that holds or has applied for a license shall individually apply for and obtain a certification of finding of suitability. For purposes of this subsection, key executives are those officers, employees, volunteers and other persons who are designated by the nonprofit organization as key executives. The board may require additional officers, employees, volunteers and other persons to apply for and obtain a certification of finding of suitability if the board determines the public interest is served by the additional certifications. A person who is required to be certified pursuant to this subsection shall apply for certification within thirty days after becoming an officer or key executive. A person who is required to be certified pursuant to a decision of the board shall apply for certification within thirty days after the board so requests. A person required or requested to be certified pursuant to this subsection shall provide to the board an application for certification, including a personal history, a financial statement, copies of the person's income tax returns for the three years immediately prior to the year of the application and other information that the board deems necessary or appropriate.

History: Laws 1997, ch. 190, § 22; 1999, ch. 251, § 3; 2002, ch. 101, § 1; 2009, ch. 199, § 7.

The 2009 amendment, effective June 19, 2009, in Subsection A, in the first sentence, after "applied for a license shall", deleted "be certified"; after "be certified individually", added "apply for and obtain a certification of finding of suitability"; after "company's key executives to", deleted "be certified" and added "apply for and obtain a certification of finding of suitability"; and added the fourth sentence; and in Subsection B, in the first sentence, after "applied for a license shall", deleted "be certified"; in the second sentence, after "volunteers and other persons to",

deleted "become certified" and added "apply for and obtain a certification of finding of suitability"; and in the fifth sentence, at the beginning of the sentence, deleted "An officer, employee, volunteer or other" and after "requested to be certified", deleted "pursuant to this subsection".

The 2002 amendment, effective March 5, 2002, deleted "president or commander and" preceding "key executives" in the first sentence of Subsection B.

The 1999 amendment, effective June 18, 1999, substituted "subsection" for "section" in the second sentence in Subsection A and added Subsection B.

60-2E-21. Requirements if company is or becomes a subsidiary; investigations; restrictions on unsuitable persons; other requirements.

A. If the company applicant or licensee is or becomes a subsidiary, each nonpublicly traded holding company and intermediary company with respect to the subsidiary company shall:

- (1) qualify to do business in New Mexico; and
- (2) register with the board and furnish to the board the following information:
 - (a) a complete list of all beneficial owners of five percent or more of its equity securities, which shall be updated within thirty days after any change;
 - (b) the names of all company officers and directors within thirty days of their appointment or election;
 - (c) its organization, financial structure and nature of the business it operates;
 - (d) the terms, position, rights and privileges of the different classes of its outstanding securities;
 - (e) the terms on which its securities are to be, and during the preceding three years have been, offered;
 - (f) the holder of and the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest pertaining to the applicant or licensee;
 - (g) the extent of the securities holdings or other interest in the holding company or intermediary company of all officers, directors, key executives, underwriters, partners, principals, trustees or any direct or beneficial owners, and the amount of any remuneration paid them as compensation for their services in the form of salary, wages, fees or by contract pertaining to the licensee;
 - (h) remuneration to persons other than directors, officers and key executives exceeding two hundred fifty thousand dollars (\$250,000) per year;
 - (i) bonus and profit-sharing arrangements within the holding company or intermediary company, if deemed necessary by the board;
 - (j) management and service contracts pertaining to the licensee or applicant, if deemed necessary by the board;
 - (k) options existing or to be created in respect to the company's securities or other interests, if deemed necessary by the board;
 - (l) balance sheets and profit and loss statements, audited by independent certified public accountants or their foreign equivalents, for not more than the three preceding fiscal years, or, if the holding company or intermediary company has not been in existence more than three years, balance sheets and profit and loss statements from the time of its establishment, together with projections for three years from the time of its establishment;
 - (m) any further financial statements necessary or appropriate to assist the board in making its determinations; and
 - (n) a current annual profit and loss statement, a current annual balance sheet and a copy of the company's most recent federal income tax return or its foreign equivalent within thirty days after the return is filed.

B. The board may require all holders of five percent or more of the equity security of a holding company or intermediary company to apply for a certification of finding of suitability.

C. The board may in its discretion perform the investigations concerning the officers, directors, key executives, underwriters, security holders, partners, principals, trustees or direct or beneficial owners of any interest in any holding company or intermediary company as it deems necessary, either at the time of initial registration or at any time thereafter.

D. If at any time the board finds that any person owning, controlling or holding with power to vote all or any part of any class of securities of, or any interest in, any holding company or intermediary company is unsuitable to be connected with a licensee, it shall so notify both the unsuitable person and the holding company or intermediary company. The unsuitable person shall immediately offer the securities or other interest to the issuing company for purchase. The company shall purchase the securities or interest offered upon the terms and within the time period ordered by the board.

E. Beginning on the date when the board serves notice that a person has been found to be unsuitable pursuant to Subsection D of this section, it is unlawful for the unsuitable person to:

- (1) receive any dividend or interest upon any securities held in the holding company or intermediary company, or any dividend, payment or distribution of any kind from the holding company or intermediary company;

(2) exercise, directly or indirectly or through a proxy, trustee or nominee, any voting right conferred by the securities or interest; or

(3) receive remuneration in any form from the licensee, or from any holding company or intermediary company with respect to that licensee, for services rendered or otherwise.

F. A holding company or intermediary company subject to the provisions of Subsection A of this section shall not make any public offering of any of its equity securities unless such public offering has been approved by the board.

G. This section does not apply to a holding company or intermediary company that is a publicly traded corporation, the stock of which is traded on recognized stock exchanges, which shall instead comply with the provisions of Section 60-2E-22 NMSA 1978.

History: Laws 1997, ch. 190, § 23; 2009, ch. 199, § 8.

The 2009 amendment, effective June 19, 2009, in Subparagraph (h) of Paragraph (2) of Subsection A, changed "fifty thousand dollars (\$50,000)" to "two hundred fifty thousand dollars (\$250,000)"; in Subparagraphs (i), (j) and (k) of Paragraph (2) of Subsection A, at the end of each sentence, added "if deemed necessary by the board"; in Subparagraph (l) of Paragraph (2) of Subsection A, after

"loss statements" deleted "certified" and added "audited" and after "certified public accountants", added "or their foreign equivalents"; in Subparagraph (n) of Paragraph (2) of Subsection A, after "federal income tax return", added "or its foreign equivalent"; and in Subsection B, at the beginning of the sentence, added "The board may require"; after "intermediary company", changed "shall" to "to" and after "apply for a", added "certification of".

60-2E-22. Change in company ownership.

A. If a company applicant or company licensee proposes to transfer ownership of twenty percent or more of the applicant or licensee, it shall notify the board in writing and provide the following information about the successor company:

(1) if the company is a publicly traded corporation, as of the date the company became a publicly traded corporation, and on any later date when the information changes, the names of all stockholders of record who hold five percent or more of the outstanding shares of any class of equity securities issued by the publicly traded corporation;

(2) the names of all officers within thirty days of their respective appointments;

(3) the names of all directors within thirty days of their respective elections or appointments;

(4) the organization, financial structure and nature of the businesses the company operates;

(5) if the company is a publicly traded corporation, the terms, position, rights and privileges of the different classes of securities outstanding as of the date the company became a publicly traded corporation;

(6) if the company is a publicly traded corporation, the terms on which the company's securities were issued during the three years preceding the date on which the company became a publicly traded corporation and the terms on which the publicly traded corporation's securities are to be offered to the public as of the date the company became a publicly traded corporation;

(7) the terms and conditions of all outstanding indebtedness and evidence of security pertaining directly or indirectly to the company;

(8) remuneration exceeding one hundred thousand dollars (\$100,000) per year paid to persons other than directors, officers and key executives who are actively and directly engaged in the administration or supervision of the gaming activities of the company;

(9) bonus and profit-sharing arrangements within the company directly or indirectly relating to its gaming activities;

(10) management and service contracts of the company pertaining to its gaming activities;

(11) options existing or to be created pursuant to its equity securities;

(12) balance sheets and profit and loss statements, certified by independent certified public accountants or their foreign equivalents, for not less than the three fiscal years preceding the date of the proposed transfer of ownership;

(13) any further financial statements deemed necessary or appropriate by the board; and

(14) a description of the company's affiliated companies and intermediary companies and gaming licenses, permits and approvals held by those entities.

B. The board shall determine whether the proposed transaction is a transfer or assignment of the license as prohibited by Subsection G of Section 60-2E-14 NMSA 1978. If the board determines

that the proposed transaction is prohibited, it shall notify the licensee in writing and shall require the proposed transferee to file an application for a license. If the board determines that the proposed transaction is not a prohibited transfer or assignment of the license, it shall make a determination as to whether to issue a certification approving the transaction. The board shall consider the following information about the successor company in determining whether to certify the transaction:

- (1) the business history of the company, including its record of financial stability, integrity and success of its gaming operations in other jurisdictions;
- (2) the current business activities and interests of the company, as well as those of its officers, promoters, lenders and other sources of financing, or any other persons associated with it;
- (3) the current financial structure of the company as well as changes that could reasonably be expected to occur to its financial structure as a consequence of its proposed action;
- (4) the present and proposed compensation arrangements between the company and its directors, officers, key executives, securities holders, lenders or other sources of financing;
- (5) the equity investment, commitment or contribution of present or prospective directors, key executives, investors, lenders or other sources of financing; and
- (6) the dealings and arrangements, prospective or otherwise, between the company and its investment bankers, promoters, finders or lenders and other sources of financing.

C. The board may issue a certification upon receipt of a proper application and consideration of the criteria set forth in Subsection B of this section if it finds that the certification would not be contrary to the public interest or the policy set forth in the Gaming Control Act.

D. The board shall require the officers, directors key executives and holders of an equity security interest of five percent or more of the successor company and any other person specified in the Gaming Control Act to apply for and obtain a certification of finding of suitability.

History: Laws 1997, ch. 190, § 24; 2009, ch. 199, § 9.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "company license", deleted "is or becomes a publicly traded corporation, it shall register with the board" and added "proposes to transfer ownership of twenty percent or more of the applicant or licensee, it shall notify the board in writing" and after "the following information", added "about the successor company"; added Paragraph (1) of Subsection A; in Paragraph (4) of Subsection A, after "nature of the business in", deleted "publicly traded corporation" and added "company"; in Paragraphs (5) and (6) of Subsection A, at the beginning of each sentence, added "if the company is a publicly traded corporation"; in Paragraph (7) of Subsection A, after "indirectly to the", deleted "publicly traded corporation" and added "company"; in Paragraph (8) of Subsection A, changed "fifty thousand dollars (\$50,000)" to "one hundred thousand dollars (\$100,000)" and after "gaming activities of the", deleted "publicly traded corporation" and added "company"; in Paragraph (9) of Subsection A, after "arrangements within the", deleted "publicly traded corporation" and added "company"; in Paragraph (10) of

Subsection A, after "contracts of the", deleted "corporation" and added "company"; in Paragraph (12) of Subsection A, after "certified public accountants", added "or their foreign equivalents" and after "preceding the date", deleted "the company became a publicly traded corporation" and added "of the proposed transfer of ownership"; in Paragraph (14) of Subsection A, after "description of the", deleted "publicly traded corporation's" and added "company's"; in Subsection B, after "The board shall", deleted "consider the following criteria in determining whether to certify a publicly traded corporation" and added the remainder of the subsection; in Paragraph (1) of Subsection B, after "business history of the", deleted "publicly traded corporation" and added "company"; in Paragraph (3) of Subsection B, after "financial structure of the", deleted "publicly traded corporation" and added "company"; in Paragraph (4) of Subsection B, after "arrangements between the", deleted "publicly traded corporation" and added "company"; in Paragraph (6) of Subsection B, after "otherwise, between the", deleted "publicly traded corporation" and added "company"; and added Subsection D.

60-2E-23. Finding of suitability required for directors, officers and key executives; removal from position if found unsuitable; suspension of suitability by board.

A. Each officer, director and key executive of a holding company, intermediary company or publicly traded corporation who the board determines is or is to become actively and directly engaged in the administration or supervision of, or in any other significant involvement with, the activities of the subsidiary licensee or applicant shall apply for a finding of suitability.

B. If any officer, director or key executive of a holding company, intermediary company or publicly traded corporation required to be found suitable pursuant to Subsection A of this section fails

to apply for a finding of suitability within thirty days after being requested to do so by the board, or is not found suitable by the board, or if his finding of suitability is revoked after appropriate findings by the board, the holding company, intermediary company or publicly traded corporation shall immediately remove that officer, director or key executive from any office or position in which the person is engaged in the administration or supervision of, or any other involvement with, the activities of the certified subsidiary until the person is thereafter found to be suitable. If the board suspends the finding of suitability of any officer, director or key executive, the holding company, intermediary company or publicly traded corporation shall immediately and for the duration of the suspension suspend that officer, director or key executive from performance of any duties in which he is actively and directly engaged in the administration or supervision of, or any other involvement with, the activities of the subsidiary licensee.

History: Laws 1997, ch. 190, § 25; 1999, ch. 251, § 4; 2002, ch. 102, § 11.

The 2002 amendment, effective March 5, 2002, substituted "who" for "that" in Subsection A.

The 1999 amendment, effective June 18, 1999, purported to amend this section but made no change.

60-2E-24. Suitability of individuals acquiring beneficial ownership of voting security in publicly traded corporation; report of acquisition; application; prohibition.

A. Each person who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of five percent or more of any voting securities in a publicly traded corporation registered with the board may be required to be found suitable if the board has reason to believe that the acquisition of the ownership would otherwise be inconsistent with the declared policy of this state.

B. Each person who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of five percent or more of any class of voting securities of a publicly traded corporation certified by the board shall notify the board within ten days after acquiring such interest.

C. Each person who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of more than ten percent of any class of voting securities of a publicly traded corporation certified by the board shall apply to the board for a finding of suitability within thirty days after acquiring such interest.

D. Institutional investors that have been exempted from or have received a waiver of suitability requirements pursuant to regulations adopted by the board are not required to comply with this section.

E. Any person required by the board or by the provisions of this section to be found suitable shall apply for a finding of suitability within thirty days after the board requests that he do so.

F. Any person required by the board or the provisions of this section to be found suitable who subsequently is found unsuitable by the board shall not hold directly or indirectly the beneficial ownership of any security of a publicly traded corporation that is registered with the board beyond that period of time prescribed by the board.

G. The board may, but is not required to, deem a person qualified to hold a license or be found suitable as required by this section if the person currently holds a valid license issued by, or has been found suitable by, gaming regulatory authorities in another jurisdiction, provided that the board finds that the other jurisdiction has conducted a thorough investigation of the applicant and has criteria substantially similar to those of the board to determine when a person is to be found suitable or to obtain a license.

History: Laws 1997, ch. 190, § 26.

60-2E-25. Report of proposed issuance or transfer of ownership; report of change in corporate officers and directors; approval of board.

A. Before a company licensee, other than a publicly traded corporation, may issue or transfer five percent or more of its ownership to a person, it shall file a report of its proposed action with the board, which report shall request the approval of the board. The board shall have ninety days within which to approve or deny the request. If the board fails to act in ninety days, the request is deemed approved. If the board denies the request, the company shall not issue or transfer five percent or more of its securities to the person about whom the request was made.

B. A company licensee shall file a report of each change of the corporate officers and directors with the board within thirty days of the change. The board shall have ninety days from the date the report is filed within which to approve or disapprove such change. During the ninety-day period and thereafter, if the board does not disapprove the change, an officer or director is entitled to exercise all powers of the office to which the officer or director was elected or appointed.

C. A company licensee shall report to the board in writing a change in company personnel who have been designated as key executives. The report shall be made no later than thirty days after the change.

D. The board may require that a company licensee furnish the board with a copy of its federal income tax return within thirty days after the return is filed.

History: Laws 1997, ch. 190, § 27; 2009, ch. 199, § 10.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "five percent or more of its", deleted "securities" and added "ownership".

60-2E-26. Gaming operator licensees; general provisions; business plan; player age limit; restrictions.

A. An applicant for a gaming operator's license shall submit with the application a plan for assisting in the prevention, education and treatment of compulsive gambling. The plan shall include regular educational training sessions for employees. Plan approval by the board is a condition of issuance of the license.

B. An applicant for a gaming operator's license shall submit with the application a proposed business plan. The plan shall include at least:

- (1) a floor plan of the area to be used for gaming machine operations;
- (2) an advertising and marketing plan;
- (3) the proposed placement and number of gaming machines;
- (4) a current financial status and gaming protection plan;
- (5) a security plan;
- (6) a staffing plan for gaming machine operations;
- (7) internal control systems in compliance with Section 60-2E-35 NMSA 1978; and
- (8) details of any proposed progressive systems.

C. A gaming operator licensee shall be granted a license to operate a number of machines, not to exceed the statutory maximum, at a gaming establishment identified in the license application and shall be granted a license for each gaming machine.

D. A gaming operator licensee shall apply for and pay the machine license fee for any increase in the number of authorized gaming machines in operation at the licensed premises and shall notify the board of any decrease in the number of authorized gaming machines in operation at the licensed premises.

E. Gaming machines may be available for play only in an area restricted to persons twenty-one years of age or older.

F. A gaming operator licensee shall erect a permanent physical barrier to allow for multiple uses of the premises by persons of all ages. For purposes of this subsection, "permanent physical barrier" means a floor-to-ceiling wall separating the general areas from the restricted areas. The entrance to the area where gaming machines are located shall display a sign that the premises are

restricted to persons twenty-one years of age or older. Persons under the age of twenty-one shall not enter the area where gaming machines are located.

G. A gaming operator licensee shall not have automated teller machines in the area restricted pursuant to Subsection F of this section.

H. A gaming operator licensee shall not provide, allow, contract or arrange to provide alcohol or food for no charge or at reduced prices as an incentive or enticement for patrons to game.

I. Only a racetrack licensed by the state racing commission or a nonprofit organization may apply for or be issued a gaming operator's license. No other persons are qualified to apply for or be issued a gaming operator's license pursuant to the Gaming Control Act.

History: Laws 1997, ch. 190, § 28; 2009, ch. 199, § 11.

The 2009 amendment, effective June 19, 2009, in Subsections A and B, after "An applicant for" deleted "license as a gaming operator" and added "a gaming operator's license"; in Paragraph (4) of Subsection B, changed "a financial control plan" to "a current financial status and gaming protection plan"; added Paragraph (7) of Subsection B; in Subsection C, after "license to operate a",

deleted "specific" and after "number of machines", added "not to exceed the statutory maximum"; in Subsection D, after "gaming operator licensee", deleted "who desires to change the number of machines in operation at a gaming establishment shall apply to the board for an amendment to this license authorizing a change in the number of machines" and added the remainder of the sentence.

60-2E-27. Gaming operator licensees; special conditions for racetracks; number of gaming machines; days and hours of operations.

A. A racetrack licensed by the state racing commission pursuant to the Horse Racing Act to conduct live horse races or simulcast races may be issued a gaming operator's license to operate gaming machines on its premises where live racing is conducted.

B. A racetrack's gaming operator's license shall automatically become void if:

- (1) the racetrack no longer holds an active license to conduct pari-mutuel wagering;
- (2) the racetrack paid gaming tax to the state on its net take in an amount greater than eight million dollars (\$8,000,000) in the prior fiscal year pursuant to Section 60-2E-47 NMSA 1978 and fails to maintain a minimum of four live race days a week with at least nine live races on each race day during its licensed race meet, except as provided in Subsection F of this section; or
- (3) the racetrack paid gaming tax to the state on its net take in an amount equal to eight million dollars (\$8,000,000) or less in the prior fiscal year pursuant to Section 60-2E-47 NMSA 1978 and fails to maintain a minimum of three live race days a week with at least ten live races on each day during its licensed race meets, except as provided in Subsection F of this section.

C. Unless a larger number is allowed pursuant to Subsection D of this section, a gaming operator licensee that is a racetrack may have up to six hundred licensed gaming machines.

D. By execution of an allocation agreement, signed by both the allocating racetrack and the racetrack to which the allocation is made, a gaming operator licensee that is a racetrack may allocate any number of its authorized gaming machines to another gaming operator licensee that is a racetrack. To be valid, the allocation agreement must bear the written approval of the board and the state racing commission, and this approval shall make specific reference to the meeting at which the action of approval was taken and the number of votes cast both for and against the approval. By allocating a number of its authorized machines to another racetrack, the allocating racetrack automatically surrenders all rights to operate the number of machines allocated. No racetrack shall operate or be authorized to operate more than seven hundred fifty gaming machines.

E. Gaming machines on a racetrack gaming operator licensee's premises may be played only on days when the racetrack is either conducting live horse races or simulcasting horse race meets. On days when gaming machines are permitted to be operated, a racetrack gaming operator licensee may offer gaming machines for operation for up to eighteen hours per day; provided that the total number of hours in which gaming machines are operated does not exceed one hundred twelve hours in a one-week period beginning on Tuesday at 8:00 a.m. and ending at 8:00 a.m. on the following Tuesday. A racetrack gaming operator licensee may offer gaming machines for play at any time during a day; provided that the total hours of operation in each day from just after midnight of the previous day until midnight of the current day does not exceed eighteen hours. A racetrack gaming operator licensee shall determine, within the limitations imposed by this subsection, the

hours it will offer gaming machines for operation each day and shall notify the board in writing of those hours.

F. Maintaining fewer live race days or fewer live races on each race day during a licensed race meet does not constitute a failure to maintain the minimum number of live race days or races as required by Paragraphs (2) and (3) of Subsection B of this section if the licensee submits to the board written approval by the state racing commission for the licensee to vary the minimum number of live race days or races, and the variance is due to:

- (1) the inability of a racetrack gaming operator licensee to fill races as published in the licensee's condition book as long as the same type of canceled race is run within the following two race weeks as the race season permits;
- (2) severe weather or other act, event or occurrence resulting from natural forces;
- (3) a strike or work stoppage by jockeys or other persons necessary to conduct a race or meet;
- (4) a power outage, electrical failure or failure or unavailability of any equipment or supplies necessary to conduct a race or meet;
- (5) hazardous conditions or other threats to the public health or safety; or
- (6) any other act, event or occurrence that the board finds is not within the control of the licensee even with the exercise of reasonable diligence or care.

G. Alcoholic beverages shall not be sold, served, delivered or consumed in the area restricted pursuant to Subsection F of Section 60-2E-26 NMSA 1978.

History: Laws 1997, ch. 190, § 29; 2000, ch. 90, § 1; 2001, ch. 334, § 1; 2005, ch. 350, § 1; 2009, ch. 199, § 12; 2017, ch. 10, § 1.

The 2017 amendment, effective June 16, 2017, changed the conditions upon which a racetrack's gaming operator's license shall automatically become void; in Subsection B, Paragraph B(2), after "the racetrack", added "paid gaming tax to the state on its net take in an amount greater than eight million dollars (\$8,000,000) in the prior fiscal year pursuant to Section 60-2E-47 NMSA 1978 and", and added Paragraph B(3); in Subsection F, in the introductory paragraph, after "Maintaining fewer", deleted "than four", after "live race days or", deleted "nine" and added "fewer", after "required by", deleted "Paragraph" and added "Paragraphs", and after "(2)", added "and (3)"; and in Paragraph F(1), after "the licensee's condition book", added the remainder of the paragraph.

The 2009 amendment, effective June 19, 2009, in Paragraph (2) of Subsection B, after "licensed race meet", added the remainder of the sentence; in Subsection C, at the beginning of the sentence, added "Unless a larger number is allowed pursuant to Subsection C of this section" and after "six hundred licensed gaming machines", deleted "but the number of gaming machines to be located on the licensee's premises shall be specified in the gaming operator's license"; and added Subsection F.

The 2001 amendment, in Subsection C, substituted "six hundred" for "three hundred"; added Subsection D; and redesignated former Subsection D as E and former E as F.

The 2005 amendment, effective July 1, 2005, in Subsection B(2), deleted the former provision which provided that a license shall become void if the racetrack fails to maintain a minimum of three live race days a week with at least nine live races on each race day during it licensed race meet in the 1997 calendar year and in the 1998 and subsequent calendar years; in Subsection E, deleted the former provision which provided that a gaming operator licensee that is a racetrack shall be permitted to conduct games on only the aforementioned days for a daily period not to exceed twelve hours; and in Subsection E, provided for expanded operating hours for gaming machines at racetracks.

The 2000 amendment, effective May 17, 2000, updated the internal reference in Subsection E, deleted Subsection F, relating to the legal hours of operation for gaming machines at a racetrack, and deleted the internal reference to Subsection F from the beginning of Subsection D.

Compiler's notes. — Laws 2001, ch. 334, § 2 made the act effective when the compact negotiated between the state and the tribes during the first session of the forty-fifth legislature was approved in writing by the tribes, the state and the secretary of the interior and notice of such approval was published in the Federal Register. Notice was published in the Federal Register on December 14, 2001, of an agreement with the Pueblo of Tesuque, San Felipe, Isleta, Laguna, Sarida, San Juan, Santa Ana, Santa Clara, and Acoma, Notice of an agreement with the Pueblo of Taos was published on December 20, 2000. Notice of an agreement with the Jicarilla Apache Nation was published on January 15, 2002. Notice of an agreement with the Pueblo of Nambe was published on February 8, 2002.

ANNOTATIONS

License was void for failure to conduct live horse races. — Where the racing commission granted plaintiff a license to conduct live horse races for the 2010 meet which required plaintiff to conduct live horse racing from May 28, 2010 to September 6, 2010; the gaming control board granted plaintiff a conditional gaming license subject to the completion of construction of facilities to conduct live racing before the end of December 2009; plaintiff failed to hold the minimum number of live race days or races required by Subsection B(2); plaintiff filed a variance request with the racing commission in March 2010; the racing commission first tabled and then set the variance request for hearing in December 2010; and as of September 17, 2010, plaintiff had not obtained a written variance from the racing commission and was unable to run live horse races for the remainder of the 2010 race meet because plaintiff had failed to construct any facilities to conduct live horse racing, Subsection F(6) was not applicable and plaintiff's gaming license became automatically void pursuant to Subsection B(2). *La Mesa Racetrack & Casino v. N.M. Gaming Control Bd.*, 2012-NMCA-076, 283 P.3d 886.

60-2E-28. Gaming operator licensees; special conditions for nonprofit organizations; number of gaming machines; days and hours of operations.

A. A nonprofit organization may be issued a gaming operator's license to operate licensed gaming machines on its premises to be played only by active and auxiliary members.

B. No more than fifteen gaming machines may be offered for play on the premises of a nonprofit organization gaming operator licensee.

C. No gaming machine on the premises of a nonprofit organization gaming operator licensee may award a prize that exceeds four thousand dollars (\$4,000).

D. Gaming machines may be played on the premises of a nonprofit organization gaming operator licensee from 12:00 noon until 12:00 midnight every day.

History: Laws 1997, ch. 190, § 30; 2002, ch. 107, § 1. consumption of alcoholic beverages in areas where gaming machines are located.
The 2002 amendment, effective May 15, 2002, deleted former Subsection E, which prohibited the sale or

60-2E-29. Licensing of manufacturers of gaming devices; exception; disposition of gaming devices.

A. It is unlawful for a person to operate, carry on, conduct or maintain any form of manufacturing of a gaming device or associated equipment for use or play in New Mexico or any form of manufacturing of a gaming device or associated equipment in New Mexico for use or play outside of New Mexico without first obtaining and maintaining a manufacturer's license.

B. If the board revokes a manufacturer's license:

(1) no new gaming device manufactured by the manufacturer may be approved for use in this state;

(2) any previously approved gaming device manufactured by the manufacturer is subject to revocation of approval if the reasons for the revocation of the license also apply to that gaming device;

(3) no new gaming device or associated equipment made by the manufacturer may be distributed, sold, transferred or offered for use or play in New Mexico; and

(4) any association or agreement between the manufacturer and a distributor licensee or gaming operator licensee in New Mexico shall be terminated.

C. An agreement between a manufacturer licensee and a distributor licensee or a gaming operator licensee in New Mexico shall be deemed to include a provision for its termination without liability for the termination on the part of either party upon a finding by the board that either party is unsuitable. Failure to include that condition in the agreement is not a defense in an action brought pursuant to this section to terminate the agreement.

D. A gaming device shall not be used and offered for play by a gaming operator licensee unless it is identical in all material aspects to a model that has been specifically tested and approved by:

(1) the board;

(2) a laboratory selected by the board; or

(3) gaming officials in Nevada or New Jersey for current use.

E. The board may inspect every gaming device that is manufactured:

(1) for use in New Mexico; or

(2) in New Mexico for use outside of New Mexico.

F. The board may inspect every gaming device that is offered for play within New Mexico by a gaming operator licensee.

G. The board may inspect all associated equipment that is manufactured and sold for use in New Mexico or manufactured in New Mexico for use outside of New Mexico.

H. In addition to all other fees and charges imposed pursuant to the Gaming Control Act, the board may determine, charge and collect from each manufacturer an inspection fee, which shall not exceed the actual cost of inspection and investigation.

I. The board may prohibit the use of a gaming device by a gaming operator licensee if it finds that the gaming device does not meet the requirements of this section.

History: Laws 1997, ch. 190, § 31; 2009, ch. 199, § 13.

The 2009 amendment, effective June 19, 2009, made grammatical changes.

60-2E-30. Licensing of distributors of gaming devices.

A. It is unlawful for any person to operate, carry on, conduct or maintain any form of distribution of any gaming device for use or play in New Mexico or any form of distribution of any gaming device in New Mexico for use or play outside of New Mexico without first obtaining and maintaining a distributor's or manufacturer's license.

B. If the board revokes a distributor's license:

- (1) no new gaming device distributed by the person may be approved;
- (2) any previously approved gaming device distributed by the distributor is subject to revocation of approval if the reasons for the revocation of the license also apply to that gaming device;
- (3) no new gaming device or associated equipment distributed by the distributor may be distributed, sold, transferred or offered for use or play in New Mexico; and
- (4) any association or agreement between the distributor and a gaming operator licensee shall be terminated. An agreement between a distributor licensee and a gaming operator licensee shall be deemed to include a provision for its termination without liability on the part of either party upon a finding by the board that the other party is unsuitable. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

C. The board may inspect every gaming device that is distributed for use in New Mexico.

D. In addition to all other fees and charges imposed by the Gaming Control Act, the board may determine, charge and collect from each distributor an inspection fee, which shall not exceed the actual cost of inspection and investigation.

History: Laws 1997, ch. 190, § 32; 2002, ch. 102, § 12.

The 2002 amendment, effective March 5, 2002, inserted "or any form of distribution of any gaming device" in Subsection A, and inserted "in New Mexico for use or play outside of New Mexico" in Subsection A.

60-2E-31. Suitability of certain persons furnishing services or property or doing business with gaming operators; termination of association.

A. The board may determine the suitability of any person who furnishes services or property to a gaming operator licensee under any arrangement pursuant to which the person receives compensation based on earnings, profits or receipts from gaming. The board may require the person to comply with the requirements of the Gaming Control Act and with the regulations of the board. If the board determines that the person is unsuitable, it may require the arrangement to be terminated.

B. The board may require a person to apply for a finding of suitability to be associated with a gaming operator licensee if the person:

- (1) does business on the premises of a gaming establishment; or
- (2) provides any goods or services to a gaming operator licensee for compensation that the board finds to be grossly disproportionate to the value of the goods or services.

C. If the board determines that a person is unsuitable to be associated with a gaming operator licensee, the association shall be terminated. Any agreement that entitles a business other than gaming to be conducted on the premises of a gaming establishment, or entitles a person other than a licensee to conduct business with the gaming operator licensee, is subject to termination upon a finding of unsuitability of the person seeking association with a gaming operator licensee. Every agreement shall be deemed to include a provision for its termination without liability on the part of the gaming operator licensee upon a finding by the board of the unsuitability of the person seeking or having an association with the gaming operator licensee. Failure to include that condition

in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement. If the application is not presented to the board within thirty days following demand or the unsuitable association is not terminated, the board may pursue any remedy or combination of remedies provided in the Gaming Control Act.

History: Laws 1997, ch. 190, § 33.

60-2E-32. Reasons for investigations by board; complaint by board; board to appoint hearing examiner; review by board; order of board.

A. The board shall make appropriate investigations to:

- (1) determine whether there has been any violation of the Gaming Control Act or of any regulations adopted pursuant to that act;
- (2) determine any facts, conditions, practices or matters that it deems necessary or proper to aid in the enforcement of the Gaming Control Act or regulations adopted pursuant to that act;
- (3) aid in adopting regulations;
- (4) secure information as a basis for recommending legislation relating to the Gaming Control Act; or

(5) determine whether a licensee is able to meet its financial obligations, including all financial obligations imposed by the Gaming Control Act, as they become due.

B. If after an investigation the board is satisfied that a license, registration, finding of suitability or prior approval by the board of any transaction for which approval was required by the provisions of the Gaming Control Act should be limited, conditioned, suspended or revoked, or that a fine should be levied, the board shall initiate a hearing by filing a complaint and transmitting a copy of it to the licensee, together with a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the board. The complaint shall be a written statement of charges that sets forth in ordinary and concise language the acts or omissions with which the respondent is charged. It shall specify the statutes or regulations that the respondent is alleged to have violated but shall not consist merely of charges raised in the language of the statutes or regulations. The summary of the evidence shall be confidential and made available only to the respondent until such time as it is offered into evidence at any public hearing on the matter.

C. The respondent shall file an answer within thirty days after service of the complaint.

D. Upon filing the complaint, the board shall appoint a hearing examiner to conduct further proceedings.

E. The hearing examiner shall conduct proceedings in accordance with the Gaming Control Act and the regulations adopted by the board. At the conclusion of the proceedings, the hearing examiner may recommend that the board take any appropriate action, including revocation, suspension, limitation or conditioning of a license or imposition of a fine not to exceed fifty thousand dollars (\$50,000) for each violation or any combination or all of the foregoing actions.

F. The hearing examiner shall prepare a written decision containing his recommendation to the board and shall serve it on all parties.

G. The board shall by a majority vote accept, reject or modify the recommendation.

H. If the board limits, conditions, suspends or revokes any license or imposes a fine or limits, conditions, suspends or revokes any registration, finding of suitability or prior approval, it shall issue a written order specifying its action.

I. The board's order is effective on the date issued and continues in effect unless reversed upon judicial review, except that the board may stay its order pending a rehearing or judicial review upon such terms and conditions as it deems proper.

History: Laws 1997, ch. 190, § 34; 2002, ch. 102, § 13.

The 2002 amendment, effective March 5, 2002, deleted the former last sentence in Subsection F, which provided for requests for review by the board of the hearing

examiner's recommendations; deleted former Subsection G, relating to the board's review; and redesignated the remaining subsections accordingly.

60-2E-33. Emergency orders of board.

The board may issue an emergency order for suspension, limitation or conditioning of a license, registration, finding of suitability or work permit or may issue an emergency order requiring a gaming operator licensee to exclude an individual licensee from the premises of the gaming operator licensee's gaming establishment or not to pay an individual licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment in the following manner:

A. an emergency order may be issued only when the board believes that:

(1) a licensee has willfully failed to report, pay or truthfully account for and pay over any fee imposed by the provisions of the Gaming Control Act or willfully attempted in any manner to evade or defeat any fee or payment thereof;

(2) a licensee or gaming employee has cheated at a game; or

(3) the emergency order is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare;

B. the emergency order shall set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action;

C. the emergency order is effective immediately upon issuance and service upon the licensee or resident agent of the licensee or gaming employee or, in cases involving registration or findings of suitability, upon issuance and service upon the person or entity involved or resident agent of the entity involved; the emergency order may suspend, limit, condition or take other action in relation to the license of one or more persons in an operation without affecting other individual licensees or the gaming operator licensee. The emergency order remains effective until further order of the board or final disposition of the case; and

D. within five days after issuance of an emergency order, the board shall cause a complaint to be filed and served upon the person or entity involved; thereafter, the person or entity against whom the emergency order has been issued and served is entitled to a hearing before the board and to judicial review of the decision and order of the board in accordance with the provisions of the board's regulations.

History: Laws 1997, ch. 190, § 35.

60-2E-34. Exclusion or ejection of certain persons from gaming establishments; persons included.

A. The board shall by regulation provide for the establishment of a list of persons who are to be excluded or ejected from a gaming establishment. The list may include any person whose presence in the gaming establishment is determined by the board to pose a threat to the public interest or licensed gaming activities.

B. In making the determination in Subsection A of this section, the board may consider a:

(1) prior conviction for a crime that is a felony under state or federal law, a crime involving moral turpitude or a violation of the gaming laws of any jurisdiction;

(2) violation or conspiracy to violate the provisions of the Gaming Control Act relating to:

(a) the failure to disclose an interest in a gaming activity for which the person must obtain a license; or

(b) willful evasion of fees or taxes;

(3) notorious or unsavory reputation that would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive influences; or

(4) written order of any other governmental agency in this state or any other state that authorizes the exclusion or ejection of the person from an establishment at which gaming is conducted.

C. A gaming operator licensee has the right, without a list established by the board, to exclude or eject a person from its gaming establishment who poses a threat to the public interest or for any business reason.

D. Race, color, creed, national origin or ancestry, age, disability or sex shall not be grounds for placing the name of a person on the list or for exclusion or ejection under Subsection A or C of this section.

History: Laws 1997, ch. 190, § 36.

60-2E-34.1. Self-exclusion from gaming establishments; procedure; fines; confidentiality.

A. The board shall develop rules that permit a person who is a compulsive gambler to be voluntarily excluded from a gaming establishment.

B. Self-exclusion shall occur through written application made by the compulsive gambler to the board and shall be governed by the following provisions:

(1) self-exclusion shall be enforceable upon issuance of a self-exclusion order by the board to each applicable gaming establishment identified in the order;

(2) only the person who is the compulsive gambler may apply on that person's behalf;

(3) the application shall be submitted to the board;

(4) except for notification of the gaming establishments for which the self-exclusion order is effective and for notification for mailing list exclusion pursuant to this section, the application and the self-exclusion order shall be held confidential by employees of the board and a gaming operator licensee and its employees and key executives;

(5) a self-exclusion order may apply to one or more gaming establishments licensed pursuant to the Gaming Control Act;

(6) a self-excluded person, if present at a gaming establishment from which the person is excluded, shall forfeit the following to that gaming establishment, provided that all money or other property forfeited shall be used by the gaming establishment only to supplement the one-fourth percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers pursuant to Subsection E of Section 60-2E-47 NMSA 1978:

(a) all winnings of the person obtained while present at the gaming establishment; and

(b) all credits, tokens or vouchers received by the person while present at the gaming establishment;

(7) a gaming establishment is immune from liability arising out of its efforts to exclude a person identified in a self-exclusion order; and

(8) a specific term shall be set for each self-exclusion order.

C. Notice shall be submitted by the board at least monthly to all gaming establishments listing all persons who are currently self-excluded and ordering the removal of their names from direct mail or electronic advertisement or promotional lists.

D. The state gaming representative may negotiate an agreement with each tribal casino in the state to allow the state to include tribal casinos in the self-exclusion orders.

History: 1978 Comp., § 60-2E-34.1 as enacted by Laws 2009, ch. 199, § 14.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

Effective dates. — Laws 2009, ch. 199 contained no effective date provision, but, pursuant to N.M. Const., art.

60-2E-35. Internal control systems.

A. Each gaming operator licensee shall adopt internal control systems that shall include provisions for:

(1) safeguarding its assets and revenues, especially the recording of cash and evidences of indebtedness;

(2) making and maintaining reliable records, accounts and reports of transactions, operations and events, including reports to the board; and

(3) a system by which the amount wagered on each gaming machine and the amount paid out by each gaming machine is recorded on a daily basis, which results may be obtained by the board by appropriate means as described in regulations adopted by the board; all manufacturers are required

to have such a system available for gaming operators for the gaming machines that it supplies for use in New Mexico, and all distributors shall make such a system available to gaming operators.

B. The internal control system shall be designed to reasonably ensure that:

- (1) assets are safeguarded;
- (2) financial records are accurate and reliable;
- (3) transactions are performed only in accordance with management's general or specific authorization;
- (4) transactions are recorded adequately to permit proper reporting of gaming revenue and of fees and taxes and to maintain accountability of assets;
- (5) access to assets is allowed only in accordance with management's specific authorization;
- (6) recorded accountability for assets is compared with actual assets at reasonable intervals and appropriate action is taken with respect to any discrepancies; and
- (7) functions, duties and responsibilities are appropriately segregated and performed in accordance with sound accounting and management practices by competent, qualified personnel.

C. A gaming operator licensee and an applicant for a gaming operator's license shall describe, in the manner the board may approve or require, its administrative and accounting procedures in detail in a written system of internal control. A gaming operator licensee and an applicant for a gaming operator's license shall submit a copy of its written system to the board. Each written system shall include:

- (1) an organizational chart depicting appropriate segregation of functions and responsibilities;
- (2) a description of the duties and responsibilities of each position shown on the organizational chart;
- (3) a detailed, narrative description of the administrative and accounting procedures designed to satisfy the requirements of Subsection A of this section;
- (4) a written statement signed by the licensee's chief financial officer and either the licensee's chief executive officer or a licensed owner attesting that the system satisfies the requirements of this section;
- (5) if the written system is submitted by an applicant, a letter from an independent certified public accountant stating that the applicant's written system has been reviewed by the accountant and complies with the requirements of this section; and
- (6) other items as the board may require.

D. The board shall adopt and publish minimum standards for internal control procedures.

History: Laws 1997, ch. 190, § 37.

60-2E-36. Gaming employees; issuance of work permits; revocation of work permits.

A. A person shall not be employed as a gaming employee unless the person holds a valid work permit issued by the board.

B. A work permit shall be issued and may be revoked by the board as provided in regulations adopted by the board.

C. Any person whose work permit has been denied or revoked may seek judicial review.

History: Laws 1997, ch. 190, § 38.

60-2E-37. Age requirement for patrons and gaming employees.

A person under the age of twenty-one years shall not:

- A. play, be allowed to play, place wagers on or collect winnings from, whether personally or through an agent, any game authorized or offered to play pursuant to the Gaming Control Act; or
- B. be employed as a gaming employee.

History: Laws 1997, ch. 190, § 39.

60-2E-38. Calculation of net take; certain expenses not deductible.

In calculating net take from gaming machines, the actual cost to the licensee of any personal property distributed to a patron as the result of a legitimate wager may be deducted as a loss, except for travel expenses, food, refreshments, lodging or services. For the purposes of this section, "as the result of a legitimate wager" means that the patron must make a wager prior to receiving the personal property, regardless of whether the receipt of the personal property is dependent on the outcome of the wager.

History: Laws 1997, ch. 190, § 40.

60-2E-39. Limitations on taxes and license fees.

A political subdivision of the state shall not impose a license fee or tax on any licensee licensed pursuant to the Gaming Control Act except for the imposition of property taxes, local option gross receipts taxes with respect to receipts not subject to the gaming tax and the distribution provided for and determined pursuant to Subsection C of Section 60-1-15 and Section 60-1-15.2 NMSA 1978.

History: Laws 1997, ch. 190, § 41.

60-2E-40. Use of chips, tokens or legal tender required for all gaming.

All gaming shall be conducted with chips, tokens or other similar objects approved by the board or with the legal currency of the United States.

History: Laws 1997, ch. 190, § 42.

60-2E-41. Communication or document of applicant or licensee absolutely confidential; confidentiality not waived; disclosure of confidential information prohibited.

A. Any communication or document of an applicant or licensee is confidential and does not impose liability for defamation or constitute a ground for recovery in any civil action if it is required by:

- (1) law or the regulations of the board; or
- (2) a subpoena issued by the board to be made or transmitted to the board.

B. The confidentiality created pursuant to Subsection A of this section is not waived or lost because the document or communication is disclosed to the board.

C. Notwithstanding the powers granted to the board by the Gaming Control Act, the board:

- (1) may release or disclose any confidential information, documents or communications provided by an applicant or licensee only with the prior written consent of the applicant or licensee or pursuant to a lawful court order after timely notice of the proceedings has been given to the applicant or licensee;
- (2) shall maintain all confidential information, documents and communications in a secure place accessible only to members of the board; and
- (3) shall adopt procedures and regulations to protect the confidentiality of information, documents and communications provided by an applicant or licensee.

History: Laws 1997, ch. 190, § 43.

60-2E-42. Motion for release of confidential information.

An application to a court for an order requiring the board to release any information declared by law to be confidential shall be made only by petition in district court. A hearing shall be held

on the petition not less than ten days and not more than twenty days after the date of service of the petition on the board, the attorney general and all persons who may be affected by the entry of that order. A copy of the petition, all papers filed in support of it and a notice of hearing shall be served.

History: Laws 1997, ch. 190, § 44.

60-2E-43. Gaming machine central system.

The board shall develop and operate a central system into which all licensed gaming machines are connected. The central system shall be capable of:

- A. monitoring continuously, retrieving and auditing the operations, financial data and program information of the network;
- B. disabling from operation or play any gaming machine in the network that does not comply with the provisions of the Gaming Control Act or the regulations of the board;
- C. communicating, through program modifications or other means equally effective, with all gaming machines licensed by the board;
- D. interacting, reading, communicating and linking with gaming machines from a broad spectrum of manufacturers and associated equipment; and
- E. providing linkage to each gaming machine in the network at a reasonable and affordable cost to the state and the gaming operator licensee and allowing for program modifications and system updating at a reasonable cost.

History: Laws 1997, ch. 190, § 45.

60-2E-44. Machine specifications.

To be eligible for licensure, each gaming machine shall meet all specifications established by regulations of the board and:

- A. be unable to be manipulated in a manner that affects the random probability of winning plays or in any other manner determined by the board to be undesirable;
- B. have at least one mechanism that accepts coins or currency;
- C. be capable of having play suspended through the central system by the executive director until the executive director resets the gaming machine;
- D. have electronic meters within a readily accessible locked area of the gaming machine that maintain a record of all money inserted into the machine, all cash payouts of winnings, all refunds of winnings, all credits played for additional games and all credits won by players;
- E. be capable of printing out, at the request of the executive director, readings on the electronic meters of the machine;
- F. for machines that do not dispense coins or tokens directly to players, be capable of printing a ticket voucher stating the value of a cash prize won by the player at the completion of each game, the date and time of day the game was played in a twenty-four-hour format showing hours and minutes, the machine serial number, the sequential number of the ticket voucher and an encrypted validation number for determining the validity of a winning ticket voucher;
- G. be capable of being linked to the board's central system for the purpose of being monitored continuously as required by the board;
- H. provide for a payback value for each credit wagered, determined over time, of not less than eighty percent;
- I. meet the standards and specifications set by laws or regulations of the states of Nevada and New Jersey for gaming machines, whichever are more stringent;
- J. offer only games authorized and examined by the board; and
- K. display the gaming machine license issued for that machine in an easily accessible place, before and during the time that a machine is available for use.

History: Laws 1997, ch. 190, § 46; 2001, ch. 208, § 1; 2003, ch. 185, § 1; 2019, ch. 135, § 1.

The 2019 amendment, effective June 14, 2019, amended specifications for gaming machines; in Subsection C, after "until", deleted "he" and added "the executive director"; and in Subsection D, after the subsection designation, deleted "house nonresettable mechanical and" and added "have", and after "maintain a", deleted "permanent".

The 2003 amendment, effective June 20, 2003, deleted "or more than ninety-six percent" at the end of Subsection H.

The 2001 amendment, effective April 3, 2001, deleted "but does not accept bills of denominations greater than twenty dollars (\$20.00)" from the end of Subsection B.

60-2E-45. Repealed.

Repeals. — Laws 2009, ch. 199, § 15 repealed 60-2E-45 NMSA 1978, as enacted by Laws 1997, ch. 190, § 47, relating to posting of gaming machine odds, effective June 19,

2009. For provisions of former section, see the 2008 NMSA 1978 on *NMOneSource.com*.

60-2E-46. Examination of gaming devices; cost allocation.

A. The board shall examine prototypes of gaming devices of manufacturers seeking a license as required.

B. The board by regulation shall require a manufacturer to pay the anticipated actual costs of the examination of a gaming device in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the board for underpayment of actual costs.

C. The board may contract for the examination of gaming devices to meet the requirements of this section.

History: Laws 1997, ch. 190, § 48.

60-2E-47. Gaming tax; imposition; administration.

A. An excise tax is imposed on the privilege of engaging in gaming activities in the state. This tax shall be known as the "gaming tax".

B. The gaming tax is an amount equal to ten percent of the gross receipts of manufacturer licensees from the sale, lease or other transfer of gaming devices in or into the state, except receipts of a manufacturer from the sale, lease or other transfer to a licensed distributor for subsequent sale or lease may be excluded from gross receipts; ten percent of the gross receipts of distributor licensees from the sale, lease or other transfer of gaming devices in or into the state; ten percent of the net take of a gaming operator licensee that is a nonprofit organization; and twenty-six percent of the net take of every other gaming operator licensee. For the purposes of this section, "gross receipts" means the total amount of money or the value of other consideration received from selling, leasing or otherwise transferring gaming devices.

C. The gaming tax imposed on a licensee is in lieu of all state and local gross receipts taxes on that portion of the licensee's gross receipts attributable to gaming activities.

D. The gaming tax is to be paid on or before the fifteenth day of the month following the month in which the taxable event occurs. The gaming tax shall be administered and collected by the taxation and revenue department in cooperation with the board. The provisions of the Tax Administration Act [7-1-1 NMSA 1978] apply to the collection and administration of the tax.

E. In addition to the gaming tax, a gaming operator licensee that is a racetrack shall pay twenty percent of its net take to purses to be distributed in accordance with rules adopted by the state racing commission. An amount not to exceed twenty percent of the interest earned on the balance of any fund consisting of money for purses distributed by racetrack gaming operator licensees pursuant to this subsection may be expended for the costs of administering the distributions. A racetrack gaming operator licensee shall spend no less than one-fourth percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers.

F. A nonprofit gaming operator licensee shall distribute at least sixty percent of the balance of its net take, after payment of the gaming tax and any income taxes, for charitable or educational purposes.

History: Laws 1997, ch. 190, § 49; 1998, ch. 15, § 1; 1999, ch. 187, § 1; 2001, ch. 256, § 1; 2001, ch. 262, § 3; 2002, ch. 48, § 1; 2005, ch. 350, § 2.

The 2005 amendment, effective July 1, 2005, increased the tax rate on the net take of other gaming operator licensees in Subsection B from twenty-five percent to twenty-six percent.

The 2002 amendment, effective March 4, 2002, inserted the present second sentence in Subsection E. Laws 2002, ch. 48, § 2 repealed Laws 2001, ch. 256, § 1, effective March 4, 2002.

The 2001 amendment, effective June 15, 2001, in Subsection B inserted "ten percent of the net take of a gaming

operator licensee that is a nonprofit organization" and inserted "other" preceding "gaming operator licensee".

The 1999 amendment, effective June 18, 1999, substituted "rules" for "regulations" in the first sentence in Subsection E and "sixty percent" for "eighty-eight percent" in Subsection F.

The 1998 amendment, effective March 5, 1998, added the last sentence in Subsection B; added the first sentence in Subsection D; substituted "its" for "the" in the first sentence in Subsection E; and inserted "its" preceding "net" in Subsection F.

60-2E-47.1. Repealed.

Repeals. — Laws 2019, ch. 274, § 16 repealed 60-2E-47.1 NMSA 1978, as enacted by Laws 2010, ch. 31, § 3, relating to county gaming tax credit, effective July 1, 2019.

For provisions of former section, see the 2018 NMSA 1978 on NMSAOneSource.com.

60-2E-48. Civil actions to restrain violations of Gaming Control Act.

A. The attorney general, at the request of the board, may institute a civil action in any court of this state against any person to enjoin a violation of a prohibitory provision of the Gaming Control Act.

B. An action brought against a person pursuant to this section shall not preclude a criminal action or administrative proceeding against that person.

History: Laws 1997, ch. 190, § 50.

60-2E-49. Testimonial immunity.

A. The board may order a person to answer a question or produce evidence and confer immunity pursuant to this section. If, in the course of an investigation or hearing conducted pursuant to the Gaming Control Act, a person refuses to answer a question or produce evidence on the ground that he will be exposed to criminal prosecution by doing so, then the board may by approval of three members, after the written approval of the attorney general, issue an order to answer or to produce evidence with immunity.

B. If a person complies with an order issued pursuant to Subsection A of this section, he shall be immune from having a responsive answer given or responsive evidence produced, or evidence derived from either, used to expose him to criminal prosecution, except that the person may be prosecuted for any perjury committed in the answer or production of evidence and may also be prosecuted for contempt for failing to act in accordance with the order of the board. An answer given or evidence produced pursuant to the grant of immunity authorized by this section may be used against the person granted immunity in a prosecution of the person for perjury or a proceeding against him for contempt.

History: Laws 1997, ch. 190, § 51.

60-2E-50. Crime; manipulation of gaming device with intent to cheat.

A person who manipulates, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose of the component, including

varying the pull of the handle of a gaming machine with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 52; 2002, ch. 102, § 14.

The 2002 amendment, effective March 5, 2002, substituted "gaming machine" for "slot machine".

60-2E-51. Crime; use of counterfeit or unapproved tokens, currency or devices; possession of certain devices, equipment, products or materials.

A. A person who, in playing any game designed to be played with, to receive or to be operated by tokens approved by the board or by lawful currency of the United States, knowingly uses tokens other than those approved by the board, uses currency that is not lawful currency of the United States or uses currency not of the same denomination as the currency intended to be used in that game is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A person who knowingly has on his person or in his possession within a gaming establishment any device intended to be used by him to violate the provisions of the Gaming Control Act is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. A person, other than a duly authorized employee of a gaming operator acting in furtherance of his employment within a gaming establishment, who knowingly has on his person or in his possession within a gaming establishment any key or device known by him to have been designed for the purpose of and suitable for opening, entering or affecting the operation of any game, dropbox or any electronic or mechanical device connected to the game or dropbox or for removing money or other contents from them is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A person who knowingly and with intent to use them for cheating has on his person or in his possession any paraphernalia for manufacturing slugs is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. As used in this subsection, "paraphernalia for manufacturing slugs" means the equipment, products and materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing or concealing a counterfeit facsimile of tokens approved by the board or a lawful coin of the United States, the use of which is unlawful pursuant to the Gaming Control Act. The term includes:

- (1) lead or lead alloy;
- (2) molds, forms or similar equipment capable of producing a likeness of a gaming token or coin;
- (3) melting pots or other receptacles;
- (4) torches; and
- (5) tongs, trimming tools or other similar equipment.

E. Possession of more than two items of the equipment, products or material described in Subsection D of this section permits a rebuttable inference that the possessor intended to use them for cheating.

History: Laws 1997, ch. 190, § 53.

60-2E-52. Crime; cheating.

A person who knowingly cheats at any game is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 54.

60-2E-53. Crime; possession of gaming device manufactured, sold or distributed in violation of law.

A person who knowingly possesses any gaming device that has been manufactured, sold or distributed in violation of the Gaming Control Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 55.

60-2E-54. Crime; reporting and record violations; penalty.

A person who, in an application, book or record required to be maintained by the Gaming Control Act or by a regulation adopted under that act or in a report required to be submitted by that act or a regulation adopted under that act, knowingly makes a statement or entry that is false or misleading or fails to maintain or make an entry the person knows is required to be maintained or made is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 56.

60-2E-55. Crime; unlawful manufacture, sale, distribution, marking, altering or modification of devices associated with gaming; unlawful instruction; penalty.

A. A person who manufactures, sells or distributes a device that is intended by him to be used to violate any provision of the Gaming Control Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A person who marks, alters or otherwise modifies any gaming device in a manner that affects the result of a wager by determining win or loss or alters the normal criteria of random selection that affects the operation of a game or that determines the outcome of a game is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 57.

60-2E-56. Underage gaming; penalty for permitting or participation.

A. A person who knowingly permits an individual who the person knows is younger than twenty-one years of age to participate in gaming is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. An individual who participates in gaming when he is younger than twenty-one years of age at the time of participation is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1997, ch. 190, § 58.

60-2E-57. Crime; general penalties for violation of act.

A person who willfully violates, attempts to violate or conspires to violate any of the provisions of the Gaming Control Act specifying prohibited acts, the classification of which is not specifically

stated in that act, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 190, § 59.

60-2E-58. Detention and questioning of a person suspected of violating act; limitations on liability; posting of notice.

A. A gaming operator licensee or its officers, employees or agents may question a person in its gaming establishment suspected of violating any of the provisions of the Gaming Control Act. No gaming operator licensee or any of its officers, employees or agents is criminally or civilly liable:

- (1) on account of any such questioning; or
- (2) for reporting to the board or law enforcement authorities the person suspected of the violation.

B. A gaming operator licensee or any of its officers, employees or agents who has reasonable cause for believing that there has been a violation of the Gaming Control Act in the gaming establishment by a person may detain that person in the gaming establishment in a reasonable manner and for a reasonable length of time. Such a detention does not render the gaming operator licensee or his officers, employees or agents criminally or civilly liable unless it is established by clear and convincing evidence detention was unreasonable under the circumstances.

C. No gaming operator licensee or its officers, employees or agents are entitled to the immunity from liability provided for in Subsection B of this section unless there is displayed in a conspicuous place in the gaming establishment a notice in boldface type clearly legible and in substantially this form:

"Any gaming operator licensee or any of his officers, employees or agents who have reasonable cause for believing that any person has violated any provision of the Gaming Control Act prohibiting cheating in gaming may detain that person in the establishment."

History: Laws 1997, ch. 190, § 60.

60-2E-59. Administrative appeal of board action.

A. Any person aggrieved by an action taken by the board or one of its agents may request and receive a hearing for the purpose of reviewing the action. To obtain a hearing, the aggrieved person shall file a request for hearing with the board within thirty days after the date the action is taken. Failure to file the request within the specified time is an irrevocable waiver of the right to a hearing, and the action complained of shall be final with no further right to review, either administratively or by a court.

B. The board shall adopt procedural regulations to govern the procedures to be followed in administrative hearings pursuant to the provisions of this section. At a minimum, the regulations shall provide:

- (1) for the hearings to be public;
- (2) for the appointment of a hearing officer to conduct the hearing and make his recommendation to the board not more than thirty days after the completion of the hearing;
- (3) procedures for discovery;
- (4) assurance that procedural due process requirements are satisfied;
- (5) for the maintenance of a record of the hearing proceedings and assessment of costs of any transcription of testimony that is required for judicial review purposes; and
- (6) for the hearing to be held in Albuquerque or, upon written request by an aggrieved person, in the place or area affected.

C. Actions taken by the board after a hearing pursuant to the provisions of this section shall be:

- (1) written and shall state the reasons for the action;
- (2) made public when taken;

(3) communicated to all persons who have made a written request for notification of the action taken; and

(4) taken not more than thirty days after the submission of the hearing officer's report to the board.

History: Laws 1997, ch. 190, § 61; 2002, ch. 102, § 15.

The 2002 amendment, effective March 5, 2002, in Subsection B, substituted "thirty days" for "ten days" in Paragraph (2), and rewrote Paragraph (6), which read: "for

the hearing to be held in Santa Fe for enforcement hearings and hearings on actions of statewide application, and to be held in the place or area affected for enforcement hearings and hearings on actions of limited local concern".

60-2E-60. Judicial review of administrative actions.

A. Any person adversely affected by an action taken by the board after review pursuant to the provisions of Section 60-2E-59 NMSA 1978 may appeal the action to the court of appeals within thirty days after the date the action is taken. The appeal shall be on the record made at the hearing. To support his appeal, the appellant shall make arrangements with the board for a sufficient number of transcripts of the record of the hearing on which the appeal is based. The appellant shall pay for the preparation of the transcripts.

B. On appeal, the court of appeals shall set aside the administrative action only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the whole record; or
- (3) otherwise not in accordance with law.

History: Laws 1997, ch. 190, § 62; 2002, ch. 102, § 16.

Cross references. — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

The 2002 amendment, effective March 5, 2002, inserted the 30-day requirement in the first sentence of Subsection A.

60-2E-61. Repealed.

Repeals. — Laws 2009, ch. 149, § 3 repealed 60-2E-61 NMSA 1978, as enacted by Laws 1997, ch. 190, § 63, relating to liens on winnings for debt collected by human

services department, effective July 1, 2009. For provisions of former section, see the 2008 NMSA 1978 on *NMOneSource.com*.

60-2E-61.1. Lien on winnings for debt owed to or collected by human services department; procedure.

A. By operation of law, a lien attaches to a payout of one thousand two hundred dollars (\$1,200) or more from a gaming machine of a racetrack gaming operator licensee when won by a person owing a debt to or collected by the human services department acting as the state's child support enforcement agency pursuant to Title IV-D of the federal Social Security Act.

B. The human services department shall periodically provide the board with a verified list of names, social security numbers and the last known addresses of obligors owing a debt to or collected pursuant to Section 1 Subsection A by the department.

C. In order to enforce the lien, the board shall by rule adopt procedures applicable to racetrack gaming operator licensees when a payout occurs. The board shall provide a racetrack gaming operator licensee with an electronic system to search by the names and social security numbers of persons currently owing a debt subject to or collected by the human services department. Prior to the payment of a payout, the licensee shall make a good-faith effort to check the name of the winner against the list of names and social security numbers provided by the human services department to the board.

D. If the winner is a person owing a debt to or collected by the human services department, the racetrack gaming operator licensee shall retain the payout and promptly notify the department and the board on a form approved by the department. The human services department shall establish by rule an administrative process for support obligors to contest the obligation prior

to release of the funds by the licensee to the department. The human services department shall, within seven working days of receipt of notice of the payout, provide the racetrack gaming operator licensee with written notice of its intent to enforce the administrative lien and of the amount claimed. After receiving the notice of intent, the racetrack gaming operator licensee shall retain the amount claimed in a suspense account and remit the balance to the payout winner. Upon final disposition of the administrative procedure, the human services department shall immediately notify the racetrack gaming operator licensee in writing of the amount to be tendered to the department and release the lien for any funds to be distributed to the payout winner.

E. The board shall by rule adopt lien attachment and enforcement procedures applicable to other gaming operator licensees when a gaming machine payout equals one thousand two hundred dollars (\$1,200) or more.

F. Neither the board nor any gaming operator shall be liable to the human services department or to the person on whose behalf the department is collecting the debt if the licensee fails, in good faith, to match a winner's name to a name on the list provided pursuant to Subsection B of this section.

History: Laws 2009, ch. 149, § 1.

Temporary provisions. — Laws 2009, ch. 149, § 2 provided that until July 1, 2010, the gaming control board shall not impose any regulatory sanction or other penalty

upon a gaming operator licensee for a violation of Section 1 of this 2009 act.

Effective dates. — Laws 2009, ch. 149, § 4 provided that Laws 2009, ch. 149, § 1 was effective July 1, 2009.

60-2E-62. Crime; unlawful possession of gaming device.

A. It is unlawful for a person intentionally to possess an unlicensed or illegal gaming device, except that:

(1) a distributor licensee or a manufacturer licensee may possess an unlicensed gaming device while awaiting transfer of the gaming device to a gaming operator licensee for licensure; and

(2) a person may possess an unlicensed gaming device for the limited purposes provided for in Section 60-2E-13.1 NMSA 1978.

B. A person may possess an antique gambling device as defined in Subsection A of Section 30-19-1 NMSA 1978, provided the antique gambling device is not used in gambling.

C. A person violating this section is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

History: Laws 2002, ch. 102, § 18.

Emergency clauses. — Laws 2002, ch. 102, § 19 contained an emergency clause and was approved March 5, 2002.

ARTICLE 2F

New Mexico Bingo and Raffle

Sec.	Sec.
60-2F-1. Short title.	60-2F-15. Persons permitted to conduct bingo games; premises.
60-2F-2. Purpose.	60-2F-15.1. Persons permitted to conduct pull-tab games; premises.
60-2F-3. Gaming control board to administer act.	60-2F-16. Display of license.
60-2F-4. Definitions.	60-2F-17. Equipment.
60-2F-5. Application of act.	60-2F-18. Conduct of games of chance.
60-2F-6. Board; powers.	60-2F-19. Quarterly reports required; accounting requirements.
60-2F-7. Organizations eligible for bingo licenses.	60-2F-20. Expenses; compensation.
60-2F-8. Classifications of licenses and permits.	60-2F-21. Tax imposition.
60-2F-9. Disclosure of background information.	60-2F-22. Violation of act.
60-2F-10. Application for licenses or permits.	60-2F-23. Enforcement hearings.
60-2F-11. Standards for granting a license or permit.	60-2F-24. Appeals.
60-2F-12. Licenses and permits; specific requirements.	60-2F-25. Duty to enforce act; criminal penalties.
60-2F-13. Fees for licenses and permits; disposition of revenue.	60-2F-26. Exemptions.
60-2F-14. Forfeiture of license; ineligibility to apply for license or permit.	

60-2F-1. Short title.

Sections 1 through 26 of this act may be cited as the "New Mexico Bingo and Raffle Act".

History: Laws 2009, ch. 81, § 1.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-2. Purpose.

The purpose of the New Mexico Bingo and Raffle Act is to authorize and regulate certain games of chance by licensed nonprofit organizations.

History: Laws 2009, ch. 81, § 2.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-3. Gaming control board to administer act.

The gaming control board shall implement the state's policy on games of chance consistent with the provisions of the New Mexico Bingo and Raffle Act. It shall fulfill all duties assigned to it pursuant to the New Mexico Bingo and Raffle Act, and it shall have the authority necessary to carry out those duties.

History: Laws 2009, ch. 81, § 3.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-4. Definitions.

As used in the New Mexico Bingo and Raffle Act:

- A. "bingo" means a game of chance in which each player has one or more bingo cards printed with different numbers on which to place markers when the respective numbers are drawn and announced by a bingo caller;
- B. "bingo caller" means the individual who, in the game of bingo, draws and announces numbers;
- C. "bingo employee" means a person connected directly with a game of chance such as cashiers, floor sales clerks and pull-tab workers. A bingo employee may or may not be a member of a qualified organization;
- D. "bingo manager" means the person responsible for overseeing bingo and pull-tab activities conducted pursuant to a bingo license;
- E. "board" means the gaming control board;
- F. "charitable organization" means an organization, not for pecuniary profit, that is operated for the relief of poverty, distress or other condition of public concern in New Mexico and that has been granted an exemption from federal income tax as an organization described in Section 501(c) of the United States Internal Revenue Code of 1986, as amended or renumbered;
- G. "chartered branch, lodge or chapter of a national or state organization" means a branch, lodge or chapter that is a civic or service organization, not for pecuniary profit, and that is authorized by its written constitution, charter, articles of incorporation or bylaws to engage in a fraternal, civic or service purpose in New Mexico;
- H. "distributor" means a person, other than a manufacturer, who provides equipment to a qualified organization but does not manufacture the equipment;
- I. "educational organization" means an organization within the state, including recognized student organizations, not organized for pecuniary profit, whose primary purpose is educational in nature and designed to develop the capabilities of individuals by instruction;
- J. "environmental organization" means an organization within the state, not organized for pecuniary profit, that is primarily concerned with the protection and preservation of the natural environment;
- K. "equipment" means:

- (1) with respect to bingo:
 - (a) the receptacle and numbered objects drawn from it;
 - (b) the master board upon which the numbered objects are placed as drawn;
 - (c) the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them;
 - (d) the board or signs, however operated, used to announce or display the numbers or designations as they are drawn; and
 - (e) all other articles having a significant effect on the outcome of a game and necessary to the operation, conduct and playing of bingo; and
- (2) with respect to pull-tabs:
 - (a) the pull-tabs;
 - (b) the pull-tab flares; and
 - (c) the dispensing machines;

L. "fraternal organization" means an organization within the state, not for pecuniary profit, that is a branch, lodge or chapter of a national or state organization and that exists for the common business, brotherhood or other interests of its members;

M. "game accountant" means the individual in charge of preparing and submitting the quarterly report form;

N. "game of chance" means that specific kind of game of chance commonly known as bingo, that specific kind of game of chance commonly known as a raffle or that specific game of chance commonly known as pull-tab;

O. "gross receipts" means proceeds received by a bingo licensee from the sale of bingo cards, raffle tickets or pull-tab tickets; the sale of rights in any manner connected with participation in a game of chance or the right to participate in a game of chance, including any admission fee or charge; the sale of playing materials; and all other miscellaneous receipts;

P. "lawful purposes" means:

(1) educational, charitable, patriotic, religious or public-spirited purposes that benefit an indefinite number of persons either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them in establishing themselves in life, by erecting or maintaining public buildings or works, by providing legal assistance to peace officers or firefighters in defending civil or criminal actions arising out of the performance of their duties or by otherwise lessening the burden of government. "Lawful purposes" includes the erection, acquisition, improvement, maintenance, insurance or repair of property, real, personal or mixed, if the property is used for one or more of the benefits stated in this paragraph; or

(2) augmenting the revenue of and promoting the New Mexico state fair;

Q. "licensee" means any qualified organization to which a bingo license has been issued by the board or any person to which a manufacturer's or distributor's license has been issued by the board;

R. "manufacturer" means a person who manufactures, fabricates, assembles, produces, programs or makes modifications to equipment for use or play in games of chance in New Mexico or for sale or distribution outside of New Mexico;

S. "occasion" means a single gathering at which a series of successive bingo games are played;

T. "permittee" means any person issued a permit by the board;

U. "premises" means a room, hall, enclosure or outdoor area that is identified on a license issued pursuant to the New Mexico Bingo and Raffle Act and used for the purpose of playing games of bingo or pull-tabs;

V. "prize" means cash or merchandise won for participation in a game of chance;

W. "progressive pot" means a prize from a pull-tab or a portion of a prize from a pull-tab that is allowed to carry over from one pull-tab game to the next so that the carried-over prizes are allowed to accumulate into a larger prize;

X. "pull-tab" means gaming pieces used in a game of chance that are made completely of paper or paper products with concealed numbers or symbols that must be exposed by the player to determine wins or losses or a gaming piece that is made completely of paper or paper products with an instant-win component that must be exposed by the player on a concealed card and can be used

in a speed round for additional winnings utilizing a bingo blower. A "pull-tab" includes a tip board and can include a progressive pot;

Y. "qualified organization" means a bona fide chartered branch, lodge or chapter of a national or state organization or any bona fide religious, charitable, environmental, fraternal, educational or veterans' organization operating without profit to its members that has been in existence in New Mexico continuously for a period of two years immediately prior to conducting a raffle or making an application for a license under the New Mexico Bingo and Raffle Act and that has had a membership engaged in carrying out the objects of the corporation or organization. A voluntary firefighter's organization is a qualified organization and a labor organization is a qualified organization for the purposes of the New Mexico Bingo and Raffle Act if they use the proceeds from a game of chance solely for scholarship or charitable purposes;

Z. "raffle" means a drawing where multiple persons buy tickets to win a prize and the winner is determined by the drawing of the ticket stub out of a container that holds all the ticket stubs sold for the event;

AA. "religious organization" means an organization, church, body of communicants or group, not for pecuniary profit, gathered in common membership for mutual support and edification in piety, worship and religious observances or a society, not for pecuniary profit, of individuals united for religious purposes at a definite place; and

BB. "veterans' organization" means an organization within the state or any branch, lodge or chapter of a national or state organization within this state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States.

History: Laws 2009, ch. 81, § 4; 2011, ch. 73, § 1.

The 2011 amendment, effective June 17, 2011, in Subsection I, changed the definition of "educational organization" to include recognized student organizations;

and in Subsection L, changed the definition of "fraternal organization" to include college and high school fraternities by deleting the exception of college and high school fraternities.

60-2F-5. Application of act.

The New Mexico Bingo and Raffle Act applies to:

A. unless exempted pursuant to Section 26 [60-2F-26 NMSA 1978] of that act, qualified organizations that conduct games of chance and the games of chance conducted by the qualified organizations;

B. persons who provide equipment to qualified organizations for use or play of games of chance in New Mexico; and

C. persons who manufacture, fabricate, assemble, produce, program or make modifications to equipment for use or play of games of chance in New Mexico or for sale or distribution outside of New Mexico.

History: Laws 2009, ch. 81, § 5.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-6. Board; powers.

The board may:

A. grant, deny, suspend, condition or revoke licenses or permits issued pursuant to the New Mexico Bingo and Raffle Act, establish the terms for each classification of license to be issued pursuant to that act and set fees for submitting an application for a license;

B. compel the production of documents, books and tangible items, including documents showing the receipts and disbursements of a licensee;

C. investigate the operations of a licensee and place a designated representative on the premises for the purpose of observing compliance with the New Mexico Bingo and Raffle Act and rules or orders of the board;

D. summon witnesses;

- E. take testimony under oath for the effective discharge of the board's authority;
- F. appoint a hearing officer to conduct hearings required by the New Mexico Bingo and Raffle Act or rules adopted pursuant to that act;
- G. make rules to hold, conduct and operate all games of chance held in the state except those specifically exempted under the New Mexico Bingo and Raffle Act;
- H. adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises;
- I. determine qualifications for licensees;
- J. establish a system of standard operating procedures for licensees;
- K. adopt rules establishing a system of licensing distributors and manufacturers and licensing and governing qualified organizations;
- L. adopt rules establishing a system of permits for individuals designated as bingo managers, bingo callers and such other bingo employees as the board requires;
- M. require a statement under oath by the applicant for a license to be issued pursuant to the New Mexico Bingo and Raffle Act that the information on the application is true;
- N. inspect any games of chance being conducted;
- O. make on-site inspections of premises where games of chance are being held;
- P. inspect all equipment used for games of chance;
- Q. regulate the monetary value of prizes to be awarded for games of chance;
- R. require disclosure of information sufficient to make a determination of the suitability of an applicant for a license or permit to be issued pursuant to the New Mexico Bingo and Raffle Act;
- S. adopt and enforce all rules necessary to implement and administer the provisions of the New Mexico Bingo and Raffle Act; and
- T. provide an annual report to the governor regarding the board's administration of the New Mexico Bingo and Raffle Act.

History: Laws 2009, ch. 81, § 6.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-7. Organizations eligible for bingo licenses.

- A. Any qualified organization is eligible to apply for a bingo license to be issued by the board under the New Mexico Bingo and Raffle Act.
- B. The New Mexico state fair:
 - (1) may apply to the board for and shall be issued a bingo license pursuant to the New Mexico Bingo and Raffle Act to conduct games of chance on the grounds of the New Mexico state fair during the state fair; and
 - (2) shall pay a licensing fee to the board of one hundred dollars (\$100) per calendar year at the time of application for or renewal of a license issued pursuant to the New Mexico Bingo and Raffle Act.
- C. A qualified organization may conduct a raffle on the grounds of the New Mexico state fair during the state fair only after obtaining express prior approval of the state fair commission and the board.

History: Laws 2009, ch. 81, § 7.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-8. Classifications of licenses and permits.

- A. The board shall establish and may issue the following categories of licenses:
 - (1) bingo license;
 - (2) distributor's license; and
 - (3) manufacturer's license.
- B. The board shall establish and may issue permits for the following employees:

- (1) bingo manager;
- (2) bingo caller; and
- (3) any other bingo employee position for which the board, by rule, requires a permit.

History: Laws 2009, ch. 81, § 8.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-9. Disclosure of background information.

A. The board may require an applicant for a license or permit to be issued pursuant to the New Mexico Bingo and Raffle Act to disclose information sufficient for the board to make a determination as to the applicant's suitability. The board may adopt rules to coordinate the manner in which the information is produced.

B. An applicant shall provide all of the information required by the board.

C. The cost of a background investigation, not to exceed one hundred dollars (\$100), shall be paid by the applicant.

History: Laws 2009, ch. 81, § 9.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-10. Application for licenses or permits.

A. Each applicant for a license or permit to be issued under the New Mexico Bingo and Raffle Act shall file with the board a written application in the form prescribed by the board, duly executed and verified and containing:

- (1) the name and address of the applicant;
- (2) if not an individual, sufficient facts relating to its incorporation or organization to enable the board to determine whether or not the applicant is qualified and the names and addresses of its officers, members of the board of directors and managers;
- (3) such other information deemed necessary by the board to ensure that the applicant complies with the provisions of the New Mexico Bingo and Raffle Act and rules adopted pursuant to that act; and
- (4) an affirmation signed by the applicant or the applicant's agent that the information contained in the application is true and accurate. The application shall be signed by the applicant or the applicant's agent, and the signature shall be notarized.

B. In addition to the requirements of Subsection A of this section, each applicant for a bingo license shall provide the board with the following:

- (1) the names of the bingo manager, the bingo caller and the game accountant, and a statement from those persons that they shall be responsible for the holding, operation and conduct of games of chance in accordance with the terms of the license and the provisions of the New Mexico Bingo and Raffle Act;
- (2) sufficient facts relating to the organization to enable the board to determine whether or not it is a qualified organization;
- (3) the exact location at which the applicant will conduct bingo and pull-tabs;
- (4) the specific kind of games of chance intended to be conducted; and
- (5) whether the premises are owned or leased and, if leased, the name and address of the fee owner of the land or, if the owner is a corporation, the names of the directors and members of the board of directors.

C. The failure to accurately and truthfully provide the information required in Subsection A or B of this section is a violation of the New Mexico Bingo and Raffle Act and shall subject the applicant to the provisions of Sections 14 [60-2F-14 NMSA 1978], 23 [60-2F-23 NMSA 1978] and 25 [60-2F-25 NMSA 1978] of that act.

History: Laws 2009, ch. 81, § 10.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-11. Standards for granting a license or permit.

A. An application for a bingo license shall not be granted unless the applicant is a qualified organization and is authorized to do business in New Mexico.

B. An application for a manufacturer's license or a distributor's license shall not be granted unless the applicant is qualified to do business in New Mexico.

C. An application for a permit shall not be granted if the applicant has been convicted of a felony offense or a violation of the New Mexico Bingo and Raffle Act within ten years of the date of application.

D. The board may establish by rule additional qualifications for a licensee or permittee as it deems in the public interest.

History: Laws 2009, ch. 81, § 11.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-12. Licenses and permits; specific requirements.

A. A license issued pursuant to the New Mexico Bingo and Raffle Act shall be valid for three years and may be renewed for successive three-year terms.

B. A permit issued pursuant to the New Mexico Bingo and Raffle Act shall be valid for three years from the date of issuance and may be renewed for successive three-year terms.

C. A license or permit or a renewal of a license or permit is not transferable.

History: Laws 2009, ch. 81, § 12.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-13. Fees for licenses and permits; disposition of revenue.

A. Fees for licenses and permits issued pursuant to the New Mexico Bingo and Raffle Act shall be established by board rule but shall not exceed the following amounts:

(1) bingo license, five hundred dollars (\$500) for the initial license and five hundred dollars (\$500) for each renewal;

(2) manufacturer's license, five hundred dollars (\$500) for the initial license and five hundred dollars (\$500) for each renewal;

(3) distributor's license, five hundred dollars (\$500) for the initial license and five hundred dollars (\$500) for each renewal; and

(4) permit, seventy-five dollars (\$75.00) for the initial permit and seventy-five dollars (\$75.00) for each renewal.

B. All administrative receipts, including license and permit fees, collected pursuant to the New Mexico Bingo and Raffle Act shall be deposited in the general fund.

History: Laws 2009, ch. 81, § 13.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-14. Forfeiture of license; ineligibility to apply for license or permit.

Any person who makes a material false statement in an application for a license or permit to be issued pursuant to the New Mexico Bingo and Raffle Act or in any statement submitted with the application, fails to keep sufficient books and records to substantiate the quarterly reports required under Section 19 [60-2F-19 NMSA 1978] of the New Mexico Bingo and Raffle Act, falsifies any books or records insofar as they relate to a transaction connected with the holding, operating and conducting of a game of chance under any such license or permit or violates any of the provisions of the New Mexico Bingo and Raffle Act or of any term of the license or permit, in addition to any other criminal or civil penalties that may be imposed, may, at the option of the board, be

required to forfeit any license issued under that act and be ineligible to apply for a license under that act for at least one year thereafter.

History: Laws 2009, ch. 81, § 14.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-15. Persons permitted to conduct bingo games; premises.

A. The officers of a bingo licensee shall designate a bingo manager to be in charge and primarily responsible for the conduct of all games of bingo. The bingo manager shall supervise all bingo activities on the occasion for which the bingo manager is in charge. The bingo manager shall be familiar with the provisions of the state laws, the rules of the board and the provisions of the bingo license. The bingo manager shall be present on the premises continuously during the bingo games and for a period of at least thirty minutes after the last bingo game.

B. The bingo manager shall designate a game accountant to be primarily responsible for the proper preparation of the quarterly reports in accordance with the New Mexico Bingo and Raffle Act.

C. For a bingo game, the bingo manager shall designate a bingo caller to be responsible for drawing and announcing the bingo numbers.

D. The premises where any game of chance is being held, operated or conducted or where it is intended that any equipment be used shall at all times be open to inspection by the board and its agents and employees and by peace officers of the state or any political subdivision of the state.

E. No owner or co-owner of the premises or, if a corporation is the owner of the premises, any officer, director or stockholder owning more than ten percent of the outstanding stock shall be designated as a bingo manager, a game accountant or a bingo caller.

History: Laws 2009, ch. 81, § 15; 2019, ch. 161, § 1.

The 2019 amendment, effective April 2, 2019, removed the provision's application to pull-tab games; in the section heading, after "bingo", deleted "and pull-tab"; in

Section A, after "all games of bingo", deleted "and pull-tabs", after "supervise all", added "bingo", after "during the", added "bingo", and after "the last", added "bingo".

60-2F-15.1. Persons permitted to conduct pull-tab games; premises.

A. Only a veterans' or fraternal organization or a 501(c)(3) organization that is a bingo licensee may operate pull-tab dispensers when the organization is not concurrently operating a bingo occasion.

B. The bingo licensee shall designate a bingo manager to be in charge and primarily responsible for the conduct of all games of pull-tabs. The bingo manager shall supervise all activities for which the bingo manager is in charge. The bingo manager shall be familiar with the provisions of the state laws, the rules of the board and the provisions of the bingo license. The bingo manager need not be present on the premises continuously while a veterans' or fraternal organization or a 501(c)(3) organization that is a bingo licensee is operating pull-tab games.

C. The bingo manager shall designate a game accountant to be primarily responsible for the proper preparation of the quarterly reports in accordance with the New Mexico Bingo and Raffle Act.

D. The premises where any game of chance is being held, operated or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the board and its agents and employees and by peace officers of the state or any political subdivision of the state.

E. No owner or co-owner of the premises or, if a corporation is the owner of the premises, any officer, director or stockholder owning more than ten percent of the outstanding stock, shall be designated as a bingo manager or a game accountant.

F. Nothing in this section shall authorize a veterans' or fraternal organization or a 501(c)(3) organization to engage in class III gaming.

G. As used in this section, "501(c)(3) organization" means an organization that demonstrates to the taxation and revenue department that it has been granted exemption from the federal income

tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered.

History: 1978 Comp., § 60-2F-15.1, enacted by Laws 2019, ch. 161, § 2.

Cross references. — For Section 501(c)(3) of the Internal Revenue Code of 1986, see 26 U.S.C. § 501(c)(3).

Emergency clauses. — Laws 2019, ch. 161, § 3 contained an emergency clause and was approved April 2, 2019.

60-2F-16. Display of license.

Each license issued pursuant to the New Mexico Bingo and Raffle Act shall contain a statement of the name and address of the licensee, date of issuance and date of expiration. Any such license issued for the conduct of any games of bingo or pull-tab shall be conspicuously displayed at the place where the games are to be conducted.

History: Laws 2009, ch. 81, § 16.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-17. Equipment.

A. No bingo or pull-tab game shall be conducted with any equipment except that which is purchased or leased from a licensed distributor or manufacturer or another bingo licensee.

B. The equipment used in the playing of a bingo or pull-tab game and the method of play shall be such that each bingo card or pull-tab has an equal opportunity to be a winner. The objects or balls to be drawn shall be essentially the same as to size, shape, weight, balance and all other characteristics that may influence their selection.

C. Electronic bingo machines and video pull-tabs are not authorized for use on the premises.

History: Laws 2009, ch. 81, § 17.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-18. Conduct of games of chance.

A. For games of bingo:

(1) a bingo licensee may hold, operate or conduct no more than two hundred sixty occasions in any twelve-month period;

(2) occasions shall not be conducted more than six times in any one calendar week, with no occasion lasting more than four hours and not more than three occasions conducted in one calendar day by any one licensee;

(3) when any merchandise prize is awarded in a bingo game, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash;

(4) the aggregate amount of all prizes offered or given in all bingo games played on a single occasion shall not exceed two thousand five hundred dollars (\$2,500), exclusive of pull-tabs, raffles and door prizes;

(5) all objects or balls to be used in a game shall be present in the receptacle before the game is begun. All numbers announced shall be plainly and clearly audible to all the players present. Where more than one room is used for any one game, the receptacle and the bingo caller shall be present in the room where the greatest number of players are present, and all numbers announced shall be plainly audible to the players in that room and also audible to the players in the other rooms;

(6) the receptacle and the bingo caller who removes the objects or balls from the receptacle shall be visible to all the players at all times except where more than one room is used for any one game, in which case the provisions of Paragraph (5) of this subsection shall prevail;

(7) the particular arrangement of numbers required to be covered in order to win the game and the amount of the prize shall be clearly and audibly described and announced to the players immediately before each game is begun;

(8) any player is entitled to call for a verification of all numbers drawn at the time a winner is determined and for a verification of the objects or balls remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the bingo manager; and

(9) no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

B. For a raffle:

(1) all raffle tickets sold shall be represented in the container from which the winner is drawn;

(2) the drawing shall be open to the public;

(3) each raffle ticket shall display all information as directed by the board; and

(4) when any merchandise prize is awarded in a raffle, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash.

C. For games of pull-tabs:

(1) pull-tabs shall be sold only on the premises;

(2) winners shall be paid only on the premises; and

(3) when any merchandise prize is awarded in a pull-tab game, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash.

History: Laws 2009, ch. 81, § 18.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-19. Quarterly reports required; accounting requirements.

A. On or before April 25, July 25, October 25 and January 25, the game accountant shall file with the board, upon forms prescribed by the board, a duly verified statement covering the preceding calendar quarter showing the amount of the gross receipts derived during that period from games of chance, the total amount of prizes paid, the name and address of each person to whom has been paid six hundred dollars (\$600) or more and the purpose of the expenditure, the gross receipts derived from each game of chance and the uses to which the net proceeds have been or are to be applied. It is the duty of each bingo licensee to maintain and keep the books and records necessary to substantiate the particulars of each report.

B. If a bingo licensee fails to file reports within the time required or if the reports are not properly verified or not fully, accurately and truthfully completed, the licensee is subject to disciplinary action, including a suspension, until the default has been corrected.

C. All money collected or received from the sale of admission, extra regular cards, special game cards, sale of supplies and all other receipts from the games of chance shall be deposited in a bingo and raffle operating account of the bingo licensee that shall contain only such money. All expenses for the game shall be withdrawn from the account by consecutively numbered checks duly signed by specified officers of the licensee and payable to a specific person or organization. There shall be written on the check the nature of the expense for which the check is drawn.

D. No check shall be drawn to "cash" or a fictitious payee.

E. No portion of any contribution to lawful purposes, after it has been given over to another organization, shall be returned to the donor organization.

History: Laws 2009, ch. 81, § 19.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-20. Expenses; compensation.

A. No item of expense shall be incurred or paid in connection with the holding, operating or conducting of a game of chance held, operated or conducted pursuant to a bingo license except bona fide expenses in reasonable amounts for goods, wares and merchandise furnished or services rendered reasonably necessary for the holding, operating or conducting of a game of chance. Bona fide expenses include expenditures for payroll, building and equipment rent, utilities, security, janitorial supplies, office supplies, equipment, insurance, bank charges, automated teller machine

fees, legal fees, advertising, accounting fees, state and federal payroll-related taxes, state and federal gaming-related taxes and all other reasonable expenses necessary for the operation of games of chance.

B. A qualified organization desiring to retain the receipts derived from games of chance in the bingo and raffle operating account and for a period longer than one year shall apply to the board for special permission and, upon good cause shown, the board shall grant the request.

History: Laws 2009, ch. 81, § 20. **Effective dates.** — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-21. Tax imposition.

A. A bingo and raffle tax equal to one-half percent of the gross receipts of any game of chance held, operated or conducted for or by a qualified organization shall be imposed on the qualified organization.

B. No other state or local gross receipts tax shall apply to a qualified organization's receipts generated by a game of chance authorized by the New Mexico Bingo and Raffle Act.

C. The tax imposed pursuant to this section shall be submitted quarterly to the taxation and revenue department on or before April 25, July 25, October 25 and January 25.

D. The taxation and revenue department shall administer the tax imposed in this section pursuant to the Tax Administration Act [7-1-1 NMSA 1978].

History: Laws 2009, ch. 81, § 21.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-22. Violation of act.

A. Unless exempted pursuant to Section 26 [60-2F-26 NMSA 1978] of the New Mexico Bingo and Raffle Act, it is a violation of that act for a qualified organization to hold a game of bingo or pull-tabs for profit or gain in any manner unless the person has been issued a bingo license by the board and has been authorized by the board to hold the game of chance.

B. It is a violation of the New Mexico Bingo and Raffle Act for a person who does not manufacture, fabricate, assemble, produce, program or make modifications to equipment to provide equipment to a qualified organization for use or play of games of chance in New Mexico unless the person has been issued a distributor's license pursuant to that act.

C. It is a violation of the New Mexico Bingo and Raffle Act for a person to manufacture, fabricate, assemble, produce, program or make modifications to equipment for use or play of games of chance in New Mexico or for sale or distribution outside of New Mexico unless the person has been issued a manufacturer's license pursuant to that act.

D. It is a violation of the New Mexico Bingo and Raffle Act for a person to act as a bingo manager, a bingo caller or any other bingo employee position for which the board, by rule, requires a permit unless the person has been issued a permit pursuant to that act.

History: Laws 2009, ch. 81, § 22.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-23. Enforcement hearings.

A. A license or permit shall not be revoked or suspended without just cause.

B. The board shall make appropriate investigations to:

(1) determine whether there has been any violation of the New Mexico Bingo and Raffle Act or of any regulations adopted pursuant to that act;

(2) determine any facts, conditions, practices or matters that it deems necessary or proper to aid in the enforcement of the New Mexico Bingo and Raffle Act or regulations adopted pursuant to that act; or

(3) aid in adopting regulations.

C. If after an investigation the board is satisfied that a license or permit issued pursuant to the New Mexico Bingo and Raffle Act or prior approval by the board of any transaction for which approval was required by the provisions of the New Mexico Bingo and Raffle Act should be limited, conditioned, suspended or revoked, or that a fine should be levied, the board shall initiate a hearing by filing a complaint and transmitting a copy of it to the licensee or permittee, together with a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the board. The complaint shall be a written statement of charges that sets forth in ordinary and concise language the acts or omissions with which the respondent is charged. It shall specify the statutes or regulations that the respondent is alleged to have violated but shall not consist merely of charges raised in the language of the statutes or regulations.

D. The respondent shall file an answer within thirty days after service of the complaint.

E. Upon filing the complaint, the board shall appoint a hearing examiner to conduct further proceedings.

F. The hearing examiner shall conduct proceedings in accordance with the New Mexico Bingo and Raffle Act and the regulations adopted by the board. At the conclusion of the proceedings, the hearing examiner may recommend that the board take any appropriate action, including revocation, suspension, limitation or conditioning of a license or permit issued pursuant to the New Mexico Bingo and Raffle Act or the imposition of a fine not to exceed one thousand dollars (\$1,000) for each violation or any combination of the foregoing actions.

G. The hearing examiner shall prepare a written decision containing the hearing examiner's recommendation to the board and shall serve it on all parties.

H. The board shall by a majority vote accept, reject or modify the recommendation.

I. If the board limits, conditions, suspends or revokes any license or permit issued pursuant to the New Mexico Bingo and Raffle Act or limits, conditions, suspends or revokes any prior approval or imposes any fine, it shall issue a written order specifying its action.

J. The board's order is effective on the date issued and continues in effect unless reversed upon judicial review, except that the board may stay its order pending a rehearing or judicial review upon such terms and conditions as it deems proper.

History: Laws 2009, ch. 81, § 23. **Effective dates.** — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-24. Appeals.

A. The decision of the board in denying, suspending or revoking any license or permit issued pursuant to the New Mexico Bingo and Raffle Act or imposing any fine shall be subject to review. A licensee or permittee aggrieved by a decision of the board may appeal to the district court pursuant to the provisions of Section 39-3-1:1 NMSA 1978.

B. No proceeding to vacate, reverse or modify any final order rendered by the board shall operate to stay the execution or effect of any final order unless the district court, on application and three days' notice to the board, allows the stay. In the event a stay is ordered, the petitioner shall be required to execute the petitioner's bond in a sum the court may prescribe, with sufficient surety to be approved by the judge or clerk of the court, which bond shall be conditioned upon the faithful performance by the petitioner of the petitioner's obligation as a licensee or permittee and upon the prompt payment of all damages arising from or caused by the delay in the taking effect or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with the proceedings.

History: Laws 2009, ch. 81, § 24. **Effective dates.** — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-25. Duty to enforce act; criminal penalties.

A. It is the duty of all law enforcement officers to enforce the provisions of the New Mexico Bingo and Raffle Act. It is the duty of the district attorney of the county in which a violation is committed to prosecute such violation of that act in the manner and form as is now provided by law for the prosecutions of crimes and misdemeanors.

B. A licensee, a permittee or an officer, agent or employee of a licensee or any other person who willfully violates or who procures, aids or abets in the willful violation of the New Mexico Bingo and Raffle Act is guilty of a misdemeanor and, upon conviction thereof:

(1) for a first offense, shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six months, or both; or

(2) for a subsequent offense, shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500) or by imprisonment for not more than one year, or both.

History: Laws 2009, ch. 81, § 25.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

60-2F-26. Exemptions.

A. Except as provided in Subsection B of this section, nothing in the New Mexico Bingo and Raffle Act shall be construed to apply to:

(1) a drawing or a prize at a fair or fiesta held in New Mexico under the sponsorship or authority of the state or any of its political subdivisions, or for the benefit of a religious organization situated in this state or for charitable purposes when all the proceeds of the sale or drawing shall be expended within New Mexico for the benefit of that political subdivision, religious organization or charitable purpose; or

(2) a bingo or a raffle held by a qualified organization that holds no more than one bingo occasion or one raffle in any three consecutive calendar months and not exceeding four occasions in one calendar year.

B. Notwithstanding the provisions of Subsection A of this section, no raffle with an individual prize exceeding seventy-five thousand dollars (\$75,000) shall be held without a ten-day prior notification to the board of the conduct of the event and a subsequent notification to the board of the names, addresses and phone numbers of all prize winners.

C. Nothing in the New Mexico Bingo and Raffle Act shall be construed to apply to a lottery established and operated pursuant to the New Mexico Lottery Act [6-24-1 NMSA 1978] or gaming that is licensed and operated pursuant to the Gaming Control Act [60-2E-1 NMSA 1978].

History: Laws 2009, ch. 81, § 26.

Effective dates. — Laws 2009, ch. 81, § 31 made the act effective July 1, 2009.

Temporary provisions. — Laws 2009, ch. 81, § 29, provided that:

A. On the effective date of this act, a licensee under the Bingo and Raffle Act shall, for all purposes, be considered to be a licensee under the New Mexico Bingo and Raffle Act until the term of the license expires, at which time the license may be renewed under the New Mexico Bingo and Raffle Act.

B. Any taxes, fines, civil penalties or other obligations owed under the Bingo and Raffle Act on the effective date of this act shall be owed and enforceable under the New Mexico Bingo and Raffle Act.

C. Notwithstanding the repeal of the Bingo and Raffle Act, any violation of that act prior to its repeal may be investigated and prosecuted pursuant to the provisions of that act unless otherwise prohibited by law.

ARTICLE 3

General Provisions

(Repealed by Laws 1981, ch. 39, § 128.)

60-3-1, 60-3-2. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repealed 60-3-1 and 60-3-2 NMSA 1978, relating to general provisions concerning the Liquor Control Act, effective July 1, 1981.

For present provisions, see 60-3A-1 to 60-3A-5 NMSA 1978.

ARTICLE 3A

General Provisions

Sec.

- 60-3A-1. Short title.
- 60-3A-2. Liquor policy of state; investigation of applicants; responsibility of licensees.
- 60-3A-3. Definitions.
- 60-3A-4. Storage permitted.
- 60-3A-5. Exemptions from act.
- 60-3A-6. Authority of department of public safety.
- 60-3A-6.1. Local law enforcement; department of public safety; reporting requirements; authority to request investigations.
- 60-3A-7. Authority of the alcoholic beverage control division.

Sec.

- 60-3A-8. Powers and duties of the director of the alcoholic beverage control division.
- 60-3A-8.1. Investigative authority and powers.
- 60-3A-9. Administrative authority and powers.
- 60-3A-10. Administrative rules and orders; presumption of correctness.
- 60-3A-11. Written decisions by director.
- 60-3A-12. Partially consumed bottle of wine; licensed premises.
- 60-3A-13. Prohibited sale of certain spirituous liquors.

60-3A-1. Short title.

Chapter 60, Articles 3A, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A NMSA 1978 may be cited as the "Liquor Control Act".

History: Laws 1981, ch. 39, § 1; 1984, ch. 85, § 9; 2015, ch. 3, § 27; 2015, ch. 102, § 1.

2015 Multiple Amendments. — Laws 2015, ch. 3, § 27 and Laws 2015, ch. 102, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2015, ch. 102, § 1, as the last act signed by the governor is set out above and incorporates both amendments. The amendments enacted by Laws 2015, ch. 3, § 27 and Laws 2015, ch. 102, § 1 are described below. To view the session laws in their entirety, see the XX session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2015, ch. 3, § 27 deleted references to Articles 4B and 4C while Laws 2015, ch. 102, § 1 only deleted the reference to Article 4C.

Laws 2015, ch. 102, § 1, effective July 1, 2015, moved "Chapter 60" to the beginning of the sentence; after "4B", deleted "4C"; and after "6C", added "6E".

Laws 2015, ch. 3, § 27, effective July 1, 2015, moved "Chapter 60" to the beginning of the sentence; after "Articles 3A", deleted "4B, 4C"; and after "6C", added "6E".

ANNOTATIONS

Veto of severability clause unconstitutional. — The governor's veto of Laws 1981, ch. 39, § 129, the

severability clause of the Liquor Control Act, was unconstitutional under N.M. Const., art. IV, § 22, because that act does not appropriate money and the governor's power of partial veto is limited to bills appropriating money. *Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, 100 N.M. 342, 670 P.2d 953.

Transfer of license despite municipal disapproval.

Under the Liquor Control Act, the director of the alcohol and gaming division of the New Mexico regulation and licensing department may approve a transfer of a license despite municipal disapproval. The director must so act if the governing body fails to submit evidence supporting its decision or if, on its face, the governing body's decision is not based on evidence pertaining to the specific prospective transferee or location. *Southland Corp. v. Manzagol*, 1994-NMSC-099, 118 N.M. 423, 882 P.2d 14.

Law reviews. — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For note, "Constitutional Law - Regulating Nude Dancing in Liquor Establishments - The Preferred Position of the Twenty-First Amendment - *Nall v. Baca*," see 12 N.M.L. Rev. 611 (1982).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

60-3A-2. Liquor policy of state; investigation of applicants; responsibility of licensees.

A. It is the policy of the Liquor Control Act [60-3A-1 NMSA 1978] that the sale, service and public consumption of alcoholic beverages in the state shall be licensed, regulated and controlled so as to protect the public health, safety and morals of every community in the state; and it is the responsibility of the director to investigate the qualifications of all applicants for licenses under that act, to investigate the conditions existing in the community in which the premises for which any license is sought are located before the license is issued, to the end that licenses shall not be

issued to persons or for locations when the issuance is prohibited by law or contrary to the public health, safety or morals.

B. It is the intent of the Liquor Control Act that each person to whom a license is issued shall be fully liable and accountable for the use of the license, including but not limited to liability for all violations of the Liquor Control Act and for all taxes charged against the license.

History: Laws 1981, ch. 39, § 2.

ANNOTATIONS

Federal preemption. — New Mexico's regulatory scheme of airlines' alcoholic beverage services provided to passengers is impliedly preempted as it falls within the field of aviation safety that Congress intended federal law to occupy exclusively. However, the Twenty-first Amendment of the United States Constitution requires a balancing of New Mexico's core powers and the federal interests underlying the FAA. *US Airways, Inc. v. O'Donnell*, 627 F.3d 1318 (10th Cir. 2010).

New Mexico Liquor Control Act is exercise of police power of the state, for the welfare, health, peace, temperance and safety of its people. *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792.

License not property right, but privilege in constitutional sense. — A liquor license is a privilege and not property within the meaning of the due process and contract clauses of the constitutions of this state and the nation, and in them licensees have no vested property rights. *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792.

The licensee has no vested property right in a liquor license as it is a privilege and not property. *Yarbrough v. Montoya*, 1950-NMSC-006, 54 N.M. 91, 214 P.2d 769.

Sale of liquor not inherent privilege of United States or state citizenship. — Retail sale of intoxicating liquor is not reckoned among the inherent privileges of a citizen of the United States or the state, but is a business which is attended with dangers to the community so that it may be entirely prohibited or authorized under such conditions as will limit its evil propensities to the utmost degree. *Yarbrough v. Montoya*, 1950-NMSC-006, 54 N.M. 91, 214 P.2d 769.

As between state and licensee, liquor license is mere revocable privilege vesting no property rights in the licensee. *Nelson v. Naranjo*, 1964-NMSC-209, 74 N.M. 502, 395 P.2d 228.

Liability of lessors. — Lessors of a liquor license are fully liable and accountable for debts incurred by the lessee in the course of his use of the license. *Gavin Maloof & Co. v. Sw. Distrib. Co.*, 1987-NMSC-103, 106 N.M. 413, 744 P.2d 541.

In a case against an absent owner-lessor of a liquor license, arising out of the lessee's service of alcohol to an intoxicated patron who injured third parties (the plaintiffs), Section 41-11-1A NMSA 1978, enacted in 1983, under which the absent owner-lessor is liable for the acts of a lessee not in the employ of the licensee, was not applicable. At the time of the injury in 1982 the cause of action created by Subsection B of this section inured to the plaintiffs as a vested right, and the court could not apply Section 41-11-1A NMSA 1978 retroactively against the plaintiffs and divest them of that right. *Ashbaugh v. Williams*, 1987-NMSC-120, 106 N.M. 598, 747 P.2d 244.

The lessor of a liquor license can be held liable under the terms of Section 60-7A-16 NMSA 1978 (sales to intoxicated persons) if a violation is proved. *Williams v. Ashbaugh*, 1986-NMCA-073, 120 N.M. 731, 906 P.2d 263, *aff'd*, 1987-NMSC-120, 106 N.M. 598, 747 P.2d 244.

Purpose of liquor control legislation is to regulate and restrain and not to promote, and any loosening

of that policy is the business of the legislature, not of the courts. *State ex rel. Maloney v. Sierra*, 1970-NMSC-144, 82 N.M. 125, 477 P.2d 301; 1979 Op. Att'y Gen. No. 79-03.

Purpose of liquor control legislation. — The Liquor Control Act is a police regulation and its purpose is, as stated therein, to protect the public health, safety and morals of every community in the state. 1975 Op. Att'y Gen. No. 75-68.

Power to control distribution, sale and consumption of alcoholic liquors is vested in legislature. In exercising its power, the New Mexico legislature has enacted laws providing a uniform, comprehensive regulatory scheme governing those areas where the state's interest is preeminent. 1980 Op. Att'y Gen. No. 80-23.

Law reviews. — For comment, "Intoxicating Liquors - Price Control - Fair Trade and Minimum Markup," see 4 Nat. Resources J. 189 (1964).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For survey of 1990-91 commercial law, see 22 N.M.L. Rev. 661 (1992).

For article, "Bartlett Revisited: New Mexico Tort Law Twenty Years After the Abolition of Joint and Several Liability - Part One," see 33 N.M.L. Rev. 1 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 112.

"Owner," scope and import of term, in statutes requiring consent to granting of liquor license, 2 A.L.R. 800, 95 A.L.R. 1085.

Power to prohibit the possession of intoxicating liquor, irrespective of any intention to traffic therein, 2 A.L.R. 1085.

Civil liability of one taking out license for sale of liquor for benefit of another, 2 A.L.R. 1516.

Test of intoxicating character of liquor, 4 A.L.R. 1137, 11 A.L.R. 1233, 19 A.L.R. 512, 36 A.L.R. 725, 91 A.L.R. 513.

Federal constitutional or legislative provisions as to intoxicating liquors as affecting state legislation, 10 A.L.R. 1587, 11 A.L.R. 1320, 26 A.L.R. 661, 70 A.L.R. 132.

Validity of statute vesting discretion as to license for sale of liquor in public officials without prescribing a rule of action, 12 A.L.R. 1453, 54 A.L.R. 1104, 92 A.L.R. 400.

Private individual or corporation, power to impose license fee or a fine for benefit of, 13 A.L.R. 831, 19 A.L.R. 205.

Contracts of unlicensed dealers, validity and enforceability of, 30 A.L.R. 868, 42 A.L.R. 1226, 118 A.L.R. 646.

Revocation of liquor license of one person as ground for refusal of license to another, 153 A.L.R. 836.

Validity of statute leaving number of licenses to be granted to discretion of licensing authority, 163 A.L.R. 581.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Grant or renewal of liquor license as affected by fact that applicant held such license in the past, 2 A.L.R. 2d 1239.

Construction of "grandfather clause" of statute or ordinance regulating or licensing business or occupation, 4 A.L.R. 2d 667.

Women, provisions as to sale of liquor to, as affecting validity of regulatory statute, 9 A.L.R.2d 541.

State power to regulate price of intoxicating liquors, 14 A.L.R.2d 699.

Zoning regulation of intoxicating liquor as pre-empted by state law, 65 A.L.R.4th 555.

48 C.J.S. Intoxicating Liquors § 193.

60-3A-3. Definitions.

As used in the Liquor Control Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, powdered alcohol, frozen or freeze-dried alcohol, brandy, whiskey, rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half percent alcohol, but excluding medicinal bitters;

B. "beer" means an alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water, and includes porter, beer, ale and stout;

C. "brewer" means a person who owns or operates a business for the manufacture of beer;

D. "cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears that contains not less than one-half of one percent alcohol by volume and not more than eight and one-half percent alcohol by volume;

E. "club" means:

(1) any nonprofit group, including an auxiliary or subsidiary group, organized and operated under the laws of this state, with a membership of not less than fifty members who pay membership dues at the rate of not less than five dollars (\$5.00) per year and who, under the constitution and bylaws of the club, have all voting rights and full membership privileges, and which group is the owner, lessee or occupant of premises used exclusively for club purposes and which group the director finds:

(a) is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes; and

(b) has been granted an exemption by the United States from the payment of the federal income tax as a club under the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended, or, if the applicant has not operated as a club for a sufficient time to be eligible for the income tax exemption, it must execute and file with the director a sworn letter of intent declaring that it will, in good faith, apply for an income tax exemption as soon as it is eligible; or

(2) an airline passenger membership club operated by an air common carrier that maintains or operates a clubroom at an airport terminal. As used in this paragraph, "air common carrier" means a person engaged in regularly scheduled air transportation between fixed termini under a certificate of public convenience and necessity issued by the federal aviation administration;

F. "commission" means the secretary of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the superintendent of regulation and licensing when the term is used in reference to the licensing provisions of the Liquor Control Act;

G. "department" means the New Mexico state police division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcoholic beverage control division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

H. "director" means the chief of the New Mexico state police division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcoholic beverage control division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

I. "dispenser" means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in the person's possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages, including locally produced growlers, for consumption and not for resale off the licensed premises;

J. "distiller" means a person engaged in manufacturing spirituous liquors;

K. "golf course" means a tract of land and facilities used for playing golf and other recreational activities that includes tees, fairways, greens, hazards, putting greens, driving ranges, recreational facilities, patios, restaurants, banquet halls, pro shops, cart paths and public and private roads that are located within the tract of land;

L. "governing body" means the board of county commissioners of a county or the city council or city commissioners of a municipality;

M. "growler" means a clean, refillable, resealable container that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of New Mexico-produced beer, wine or cider for consumption off premises;

N. "hotel" means an establishment or complex having a resident of New Mexico as a proprietor or manager and where, in consideration of payment, food and lodging are regularly furnished to the general public. The establishment or complex must maintain for the use of its guests a minimum of twenty-five sleeping rooms;

O. "licensed premises" means the contiguous areas of the structure and the grounds that are under the direct control of the licensee; provided that "licensed premises" includes a restaurant that has operated continuously in two separate structures since July 1, 1987 and that is located in a local option district that has voted to disapprove the transfer of liquor licenses into that local option district, hotel, golf course, ski area or racetrack and all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of the restaurant, hotel, golf course, ski area or racetrack. "Licensed premises" also includes rural dispenser licenses located in the unincorporated areas of a county with a population of less than thirty thousand, located in buildings in existence as of January 1, 2012, that are within one hundred fifty feet of one another and that are under the direct control of the license holder;

P. "local option district" means a county that has voted to approve the sale, serving or public consumption of alcoholic beverages, or an incorporated municipality that falls within a county that has voted to approve the sale, serving or public consumption of alcoholic beverages, or an incorporated municipality of over five thousand population that has independently voted to approve the sale, serving or public consumption of alcoholic beverages under the terms of the Liquor Control Act or any former act;

Q. "manufacturer" means a distiller, rectifier, brewer or winer;

R. "minor" means a natural person under twenty-one years of age;

S. "package" means a container of alcoholic beverages that is filled or packed by a manufacturer or wine bottler for sale by the manufacturer or wine bottler to wholesalers;

T. "person" means an individual, corporation, firm, partnership, copartnership, association or other legal entity;

U. "rectifier" means a person who blends, mixes or distills alcohol with other liquids or substances for the purpose of making an alcoholic beverage for the purpose of sale other than to the consumer by the drink, and includes all bottlers of spirituous liquors;

V. "restaurant" means an establishment having a New Mexico resident as a proprietor or manager that is held out to the public as a place where food is prepared and served primarily for on-premises consumption to the general public in consideration of payment and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving food; provided that "restaurant" does not include establishments as defined in rules promulgated by the director serving only hamburgers, sandwiches, salads and other fast foods;

W. "retailer" means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in the person's possession with the intent to sell alcoholic beverages in unbroken packages, including growlers, for consumption and not for resale off the licensed premises;

X. "ski area" means a tract of land and facilities for the primary purpose of alpine skiing, snowboarding or other snow sports with trails, parks and at least one chairlift with uphill capacity and may include facilities necessary for other seasonal or year-round recreational activities;

Y. "spirituous liquors" means alcoholic beverages as defined in Subsection A of this section except fermented beverages such as wine, beer and cider;

Z. "wholesaler" means a person whose place of business is located in New Mexico and who sells, offers for sale or possesses for the purpose of sale any alcoholic beverages for resale by the purchaser;

AA. "wine" means alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, that do not contain less than one-half percent nor more than twenty-one percent alcohol by volume;

BB. "wine bottler" means a wholesaler who is licensed to sell wine at wholesale for resale only and who buys wine in bulk and bottles it for wholesale resale;

CC. "winegrower" means a person who owns or operates a business for the manufacture of wine or cider;

DD. "winer" means a winegrower; and

EE. "winery" means a licensed premises in which a winegrower manufactures and stores wine or cider.

History: Laws 1981, ch. 39, § 3; 1984, ch. 58, § 1; 1987, ch. 254, § 23; 1998, ch. 109, § 1; 1999, ch. 64, § 1; 2001, ch. 86, § 2; 2004, ch. 22, § 1; 2009, ch. 139, § 1; 2012, ch. 25, § 1; 2015, ch. 3, § 28; 2015, ch. 102, § 2; 2016, ch. 73, § 1; 2016, ch. 76, § 1; 2019, ch. 29, § 2; 2019, ch. 229, § 3; 2021, ch. 7, § 5.

Cross references. — For Section 501(a) of the Internal Revenue Code of 1986, see 26 U.S.C. § 501(a).

The 2021 amendment, effective July 1, 2021, revised definitions as used in the Liquor Control Act; in Paragraph E(2), deleted "international" preceding "airport terminal"; in Subsection I, after "including", added "locally produced"; in Subsection K, after "patios", added "restaurants, banquet halls"; in Subsection M, after "for the sale of", added "New Mexico-produced"; in Subsection O, after "contiguous areas", deleted "or areas connected by indoor passageways of a structure and the outside dining, recreation and lounge areas", after "of the structure and the grounds", deleted "and vineyards of a structure that is a winery", after "direct control of the licensee", deleted "and from which the licensee is authorized to sell, serve or allow the consumption of alcoholic beverages under the provisions of its license", and after "provided that", deleted "in the case of a restaurant"; in Subsection R, after "means a", added "natural"; in Subsection S, after "means", deleted "an immediate"; in Subsection V, after "place where", changed "meals are" to "food is", and after "cooking and serving", changed "meals" to "food"; in Subsection AA, after "wine", deleted "includes the words 'fruit juices' and"; in Subsection BB, after "means a", deleted "New Mexico"; and in Subsection EE, after "means a" changed "facility" to "licensed premises".

2019 Amendments. — Laws 2019, ch. 29, § 2, effective June 14, 2019, renamed the alcohol and gaming division to the alcoholic beverage control division; in Subsection G, after "director of the", deleted "alcohol and gaming" and added "alcoholic beverage control"; and in Subsection H, after "director of the", deleted "alcohol and gaming" and added "alcoholic beverage control".

Laws 2019, ch. 229, § 3, effective July 1, 2019, revised the definition of "cider" as used in the Liquor Control Act, and included cider in the definition of certain terms; in Subsection D, after "ripe apples", added "or pears", and after "not more than", deleted "seven" and added "eight and one-half"; in Subsection Y, after "beer", added "cider"; in Subsection CC, after "manufacture of wine", added "or cider"; and in Subsection EE, after "stores wine", added "or cider".

2016 Amendments. — Laws 2016, ch. 76, § 1, effective May 18, 2016, defined "ski area" as used in the Liquor Control Act and included "ski area" within the definition of "licensed premises", from which a licensee is authorized to sell, serve or allow the consumption of alcoholic beverages; in Subsection O, after each occurrence of "golf course", added "ski area"; and added Subsection X and redesignated the succeeding subsections accordingly.

Laws 2016, ch. 73, § 1, effective July 1, 2016, included "growlers" within the definitions of "dispenser" and

"retailer", allowing dispensers and retailers to sell alcoholic beverages in growlers; in Subsection I, after "unbroken packages", added "including growlers"; and in Subsection W, after "unbroken packages", added "including growlers".

2015 Amendments. — Laws 2015, ch. 102, § 2, effective July 1, 2015, in Subsection A, after "potable alcohol," added "powdered alcohol, frozen or freeze-dried alcohol;" added Subsection D and redesignated former Subsections E through K as Subsections F through L, respectively; and added Subsection M and redesignated the remaining subsections accordingly.

Laws 2015, ch. 3, § 28, effective July 1, 2015, in Subsection F, after "'department' means the", deleted "special investigations" and added "New Mexico state police"; in Subsection G, after "'director' means the", deleted "director" and added "chief"; and after the present language "chief of the", deleted "special investigations" and added "New Mexico state police".

The 2012 amendment, effective May 16, 2012, clarified the meaning of "licensed premises" to include certain rural dispenser licenses; in Subsection M, in the first sentence after "in the case of a restaurant", deleted "including" and added "licensed premises' includes", and after "golf course or racetrack", deleted "licensed premises' includes" and added "and"; and added the last sentence.

The 2009 amendment, effective June 19, 2009, in Subsection M, after "lounge areas of the structure", added "and the grounds and vineyards of a structure that is a winery"; and added Subsection BB.

The 2004 amendment, effective February 28, 2004, amended Subsection M to add after "a restaurant", "including a restaurant that has operated continuously in two separate structures since July 1, 1987 and that is located in a local option district that has voted to disapprove the transfer of liquor licenses into that local option district".

The 2001 amendment, effective July 1, 2001, substituted "director of the alcohol and gaming division of the regulation and licensing department" for "superintendent of regulation and licensing" in Subsections F and G, and made stylistic changes throughout the section.

The 1999 amendment, effective July 1, 1999, added Subsection J, redesignated former Subsections J through Z as Subsections K through AA, inserted "golf course" in two places in Subsection M, and made minor stylistic changes.

The 1998 amendment, effective July 1, 1998, substituted "1986" for "1954" near the middle of Paragraph D(1)(b); in Subsections F and G inserted "department of" near the beginning and deleted "department" following "safety"; made a minor stylistic change in Subsections X and Y; substituted "winegrower" for "winer" at the beginning of Subsection Y; and added Subsection Z.

ANNOTATIONS

Section classifies "beverages" as alcoholic without regard to minimum contents. — This section classifies

all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including all blended or fermented beverages, as alcoholic liquors without regard to minimum alcoholic contents. "Beer" is classified as any alcoholic beverage obtained by fermentation. *State v. Spahr*, 1958-NMSC-103, 64 N.M. 395, 328 P.2d 1093.

Finding beyond reasonable doubt that beer met definition not required. — Trial court committed no fundamental error when it failed on its own motion to instruct the jury they must find beyond a reasonable doubt the beer claimed to have been sold contained more than one-half of one percent of alcohol which is the statutory definition of alcoholic liquor as it relates to beer. *State v. Baize*, 1958-NMSC-064, 64 N.M. 168, 326 P.2d 367.

Nor instruction to find beyond reasonable doubt required. — The refusal of the court to instruct the jury they must find beyond a reasonable doubt that beer alleged to have been sold contained more than one-half of one percent alcohol was not error. *State v. Spahr*, 1958-NMSC-103, 64 N.M. 395, 328 P.2d 1093.

Meaning of "dispenser". — Dispenser is any person "selling, offering for sale or having in his possession with intent to sell, alcoholic liquors by the drink or in packages" and a dispenser "sells" by the drink, not just "serves," and the word "sell" is not limited to liquor in packages. *State ex rel. Maloney v. Sierra*, 1970-NMSC-144, 82 N.M. 125, 477 P.2d 301.

"Licensed premises". — Since this section limits the use of the license only to the "licensed premises," this section will not permit the licensing of two or more totally independent structures under a single liquor license where one of the structures is already licensed as a full service lounge and the licensee proposes to operate a restaurant which would provide full service liquor sales in another structure located several hundred yards away from the lounge. 1987 Op. Att'y Gen. No. 87-10.

Electoral history determines whether city and county separate "local option districts". — In order for a city to constitute a separate local option district, it is essential that the city have a population in excess of five thousand residents and that the city have voted in favor of the sale of alcoholic liquors within its distinct limits, and will depend on the electoral history of the governmental subdivisions with respect to the approval of the sale of alcoholic liquors within their respective geographical limits. 1971 Op. Att'y Gen. No. 71-116, overruled by 1982 Op. Att'y Gen. No. 82-15.

Veterans' clubs qualify for "club" license. — Legally constituted chapters of the American Legion and the Veterans of Foreign Wars do qualify for the issuance of a "club" license under this section. 1959-60 Op. Att'y Gen. No. 59-118.

Meaning of "beverage". — Fitness for beverage purposes is an essential attribute of intoxicating liquor, and, notwithstanding a liquor contains the requisite amount of alcohol, it is not an intoxicating liquor if it is unfit for beverage purposes. The word "beverage," as used in the statutes relating to intoxicating liquors, means a liquor that is capable of being drunk, and, in determining whether a liquor is capable of being used as a beverage, the test applied is not limited to the case of an average individual with average tastes. 1959-60 Op. Att'y Gen. No. 59-190.

Alcoholic concoction within scope of liquor laws if "beverage". — In order to permit salted (cooking) wines to be sold in food store outlets without the payment of excise tax, the question must first be, either judicially or administratively, determined: "is the concoction in question capable of being used as a beverage?" If the answer is in the affirmative, then because of its alcoholic content, it would definitely be within the scope of the law pertaining to the sale of alcoholic liquors. If the question is answered

in the negative, then no liquor tax would have to be paid on it and the product could be marketed in food stores without a license, 1959-60 Op. Att'y Gen. No. 59-190.

Meaning of "package". — In keeping with the usages expressed by and implied from the term "package," such refers to the individual bottles, cans or crocks, as the case may be. 1957-58 Op. Att'y Gen. No. 57-243.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 9, 22.

Right of state to interfere with shipment of liquor through its territory, 27 A.L.R. 108.

Forbidding prescription, or restricting the amount, of intoxicating liquor for medicinal purposes, 49 A.L.R. 588.

What is a "meal" within contemplation of constitutional or statutory provisions relating to intoxicating liquors, 93 A.L.R. 962.

What amounts to "restaurant" or "restaurant business" within intoxicating liquor law, 105 A.L.R. 566.

State statute or ordinance prohibiting or regulating transportation of intoxicating liquor as interference with interstate commerce, 110 A.L.R. 931, 138 A.L.R. 1150.

Reasonableness of statutory or local regulations prohibiting sale or license for sale of intoxicating liquors within prescribed distance from church, school or other institution, 119 A.L.R. 643.

Constitutionality of statute providing for sale of intoxicating liquor by a state or state agencies, 121 A.L.R. 300.

Constitutionality, construction, and application of statutes designed to prevent or limit control of retail liquor dealers by manufacturers, wholesalers, or importers, 136 A.L.R. 1238.

Validity, construction, and application of statute or ordinance requiring closing, during certain hours, of places where intoxicating liquor is sold, as affected by fact that such places are also used for other business, 139 A.L.R. 756.

Regulations regarding bringing into state intoxicating liquor intended for personal use of consignee or carrier, 155 A.L.R. 816.

Construction and application of constitutional or statutory provision respecting taxation or regulation of sale or purchase of food or drink for consumption off the premises, 167 A.L.R. 206.

"Grandfather clause" of statute or ordinance, 4 A.L.R. 2d 667.

Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquor, 4 A.L.R. 2d 1216.

Sale of liquor to women, 9 A.L.R. 2d 541.

Zoning regulations in respect of intoxicating liquors, 9 A.L.R. 2d 877, 65 A.L.R. 4th 555.

Price regulation, 14 A.L.R. 2d 699.

"School," "schoolhouse," or the like within statute prohibiting liquor sales within specified distance thereof, 49 A.L.R. 2d 1103.

"Church" or the like, within statute prohibiting liquor sales within specified distance thereof, 59 A.L.R. 2d 1439.

Regulations forbidding employees or entertainers from drinking or mingling with patrons, or soliciting drinks from them, 99 A.L.R. 2d 1216.

Measurement of distances for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base, 4 A.L.R. 3d 1250.

Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold, 46 A.L.R. 3d 369.

Validity of statute or ordinance making it an offense to consume or have alcoholic beverages in open package in motor vehicle, 57 A.L.R. 3d 1071.

Validity, construction, and effect of statutes, ordinances or regulations prohibiting or regulating advertising of intoxication liquors, 20 A.L.R. 4th 600.

48 C.J.S. Intoxicating Liquors §§ 1, 29, 35.

60-3A-4. Storage permitted.

Nothing in the Liquor Control Act [60-3A-1 NMSA 1978] shall be construed to prohibit the storage of alcoholic beverages in bona fide public warehouses or guardian warehouses by nonresident licensees or wholesalers for usual and ordinary commercial purposes.

History: Laws 1981, ch. 39, § 72.

60-3A-5. Exemptions from act.

Nothing in the Liquor Control Act [60-3A-1 NMSA 1978] applies to:

- A. the transportation of alcoholic beverages through New Mexico;
- B. the transportation of alcoholic beverages into a United States customs bonded warehouse located in New Mexico;
- C. ethyl alcohol intended for or used for any of the following purposes:
 - (1) scientific, mechanical, industrial, medical, chemical or culinary purposes;
 - (2) use by those authorized to procure the same tax free, as provided by the acts of congress and regulations promulgated thereunder; or
 - (3) in the manufacture of denatured alcohol produced and used as provided by the acts of congress and regulations promulgated thereunder; or
- D. the sale, service, possession or public consumption of alcoholic beverages by any person within the boundaries of lands over which an Indian nation, tribe or pueblo has jurisdiction if the alcoholic beverages are purchased from New Mexico wholesalers and if the sale, service, possession or public consumption of alcoholic beverages is authorized by the laws of the Indian nation, tribe or pueblo having jurisdiction over those lands and is consistent with the ordinance of the Indian nation, tribe or pueblo certified by the secretary of the interior and published in the federal register according to the laws of the United States.

History: Laws 1981, ch. 39, § 112; 1995, ch. 203, § 1.

The 1995 amendment, effective April 6, 1995, added Subsection D and made minor stylistic changes in Subsections B and C.

ANNOTATIONS

Provisions governing hours of operation do not apply to Indian casino. — Where alcohol distributors sold alcohol to an Indian casino knowing that the casino planned to sell alcohol continuously in a twenty-four hour period, the provisions of the Liquor Control Act,

Section 60-3A-1 NMSA 1978 et seq., that alcohol may be served, did not create a duty of care to motorists who were injured in an accident caused by a drunk driver who was served alcohol which intoxicated at the casino because the act does not apply to Indian casinos. *Chavez v. Desert Eagle Distributing Co. of N.M.*, 2007-NMSA-018, 141 N.M. 116, 151 P.3d 77, cert. denied, 2007-NMCERT-001, 141 N.M. 164, 152 P.3d 151.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 62.

48 C.J.S. Intoxicating Liquors § 222.

60-3A-6. Authority of department of public safety.

The department of public safety has authority over all investigations and enforcement activities required under the Liquor Control Act [60-3A-1 NMSA 1978] except for those provisions relating to the issuance, denial, suspension or revocation of licenses, unless its assistance is requested by the director of the alcohol and gaming division of the regulation and licensing department.

History: 1978 Comp., § 60-3A-6, enacted by Laws 1987, ch. 254, § 24; 2001, ch. 86, § 3.

The 2001 amendment, effective July 1, 2001, substituted "department of public safety" for "public safety

department" in the section heading and in the section text and substituted "director of the alcohol and gaming division of the regulation and licensing department" for "superintendent of regulation and licensing".

60-3A-6.1. Local law enforcement; department of public safety; reporting requirements; authority to request investigations.

A. Within thirty days following the date of issuance of a citation pursuant to the provisions of the Liquor Control Act, the department of public safety or the law enforcement agency of a

municipality or county shall report alleged violations of that act to the alcohol and gaming division of the regulation and licensing department.

B. The director of the alcohol and gaming division of the regulation and licensing department may request the investigators of the department of public safety to investigate licensees or activities that the director has reasonable cause to believe are in violation of the Liquor Control Act.

History: 1978 Comp., § 60-4B-4.1, enacted by Laws 1993, ch. 329, § 1; recompiled and amended as § 60-3A-6.1 by Laws 2015, ch. 3, § 29.

Recompilations. — Laws 2015, ch. 3, § 29 recompiled and amended 60-4B-4.1 NMSA 1978 as 60-3A-6.1 NMSA 1978, effective July 1, 2015.

The 2015 amendment, effective July 1, 2015, provided for the reorganization of the department of public safety by changing which investigators are charged with investigating violations of the Liquor Control Act; in Subsection B, after "investigators", deleted "of the special investigations division".

60-3A-7. Authority of the alcoholic beverage control division.

The alcoholic beverage control division of the regulation and licensing department has the authority over all matters relating to the issuance, denial, suspension or revocation of licenses under the Liquor Control Act. The director of the division may request the department of public safety to provide investigatory and enforcement support as deemed necessary.

History: 1978 Comp., § 60-3A-7, enacted by Laws 1987, ch. 254, § 25; 2001, ch. 86, § 4; 2019, ch. 29, § 3.

The 2019 amendment, effective June 14, 2019, changed "alcohol and gaming" to "alcoholic beverage control"; and after "director of the division", deleted "of the regulation and licensing department".

Temporary provisions. — Laws 2019, ch. 29, § 5 provided that on June 14, 2019, all:

A. functions, personnel, appropriations, money, records, furniture, equipment and other property of the alcohol and gaming division of the regulation and licensing department are transferred to the alcoholic beverage control division of that department;

B. contractual obligations of the alcohol and gaming division of the regulation and licensing department shall

be deemed to be references to the alcoholic beverage control division of that department; and

C. references in law to the alcohol and gaming division of the regulation and licensing department shall be deemed to be references to the alcoholic beverage control division of that department.

The 2001 amendment, effective July 1, 2001, added the section heading; inserted "alcohol and gaming division of the" preceding "regulation and licensing department"; substituted "director of the alcohol and gaming division" for "superintendent"; and substituted "department of public safety" for "public safety department".

60-3A-8. Powers and duties of the director of the alcoholic beverage control division.

The director of the alcoholic beverage control division of the regulation and licensing department is responsible for the operation of the division. It is the director's duty to supervise all operations of the division and to:

A. administer the laws that the division administers, including the Liquor Control Act. The director shall request the department of public safety to enforce the provisions of the Liquor Control Act as deemed necessary;

B. exercise general supervisory authority over all employees of the division;

C. organize the division into units to enable it to function most effectively;

D. confer authority and delegate responsibility as is necessary and appropriate;

E. employ, within the limitations of current appropriations and personnel laws, persons as are required to discharge the director's duties;

F. undertake studies and conduct courses of instruction for division employees that will improve the operations of the division and advance its purposes; and

G. require compliance by employees of the division with the director's verbal and written instructions by whatever disciplinary means appropriate.

History: Laws 2001, ch. 86, § 5; 2019, ch. 29, § 4.

The 2019 amendment, effective June 14, 2019, in the section heading and introductory clause, changed "alcohol and gaming" to "alcoholic beverage control".

Temporary provisions. — Laws 2019, ch. 29, § 5 provided that on June 14, 2019, all:

A. functions, personnel, appropriations, money, records, furniture, equipment and other property of the

alcohol and gaming division of the regulation and licensing department are transferred to the alcoholic beverage control division of that department;

B. contractual obligations of the alcohol and gaming division of the regulation and licensing department shall

be deemed to be references to the alcoholic beverage control division of that department; and

C. references in law to the alcohol and gaming division of the regulation and licensing department shall be deemed to be references to the alcoholic beverage control division of that department.

60-3A-8.1. Investigative authority and powers.

A. For the purpose of enforcing the provisions of the Liquor Control Act, the director is authorized to examine and to require the production of pertinent records, books, information or evidence, to require the presence of any person and to require the person to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. The director is vested with the power to issue subpoenas. In no case shall a subpoena be made returnable less than five days from the date of service.

C. Any subpoena issued by the director shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena, and shall bear the seal of the department and be attested to by the director.

D. After service of a subpoena upon a person, if the person neglects or refuses to appear or produce records or other evidence in response to the subpoena or neglects or refuses to give testimony, as required, the director may invoke the aid of the New Mexico district courts in the enforcement of the subpoena. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce the person's books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. The director may exchange identification records and information with law enforcement agencies for official use. Identification records received from the United States department of justice, including identification records based on fingerprints, shall be used only to effectuate the licensing purposes and provisions of the Liquor Control Act. The department shall not disseminate such information except to other law enforcement agencies for official use only.

F. For the purposes of this section, "director" means the director of the alcohol and gaming division of the regulation and licensing department.

History: Laws 1981, ch. 39, § 7; 1978 Comp., § 60-4B-4 recompiled and amended as § 60-3A-8.1 by Laws 2015, ch. 3, § 30.

Recompilations. — Laws 2015, ch. 3, § 30 recompiled and amended former 60-4B-4 NMSA 1978 as 60-3A-8.1 NMSA 1978, effective July 1, 2015.

Cross references. — For identification of criminals generally, see 29-3-1 NMSA 1978 et seq.

For subpoenas generally, see Rule 1-045 NMRA.

The 2015 amendment, effective July 1, 2015, provided for the reorganization of the department of public safety by providing the director of the alcohol and gaming division of the regulation and licensing department with investigative authority and the powers to enforce the Liquor Control Act; in Subsection A, after "production of", deleted "any", and after "require", deleted "him" and added "the person"; in the first sentence of Subsection D, after "subpoena upon", deleted "him" and added "a person", after "if", deleted "any" and added "the"; in the second sentence of Subsection D, after "produce", deleted "his" and added "the person's"; in Subsection E, at the beginning of the second sentence, deleted "Any"; and added Subsection F.

ANNOTATIONS

Director's power to investigate for public interest. — Authority rests in the chief of the liquor control division (now director) to make investigations, personally or through his employees, and he may reach his determination upon what he thus learns and upon what he deems to be to the public interest. *Yarbrough v. Montoya*, 1950-NMSC-006, 54 N.M. 91, 214 P.2d 769.

Types of evidence considered during investigations. — In his investigations the chief of the division of liquor control (now director) is not limited in his determinations to considering what would constitute admissible evidence in a court of law. *Yarbrough v. Montoya*, 1950-NMSC-006, 54 N.M. 91, 214 P.2d 769.

Determination of facts required prior to license cancellation. — Before cancelling a license pursuant to his duty to cancel, the chief of division (now director), must, of necessity, determine the facts which would authorize the cancellation. *Crowe v. State ex rel. McCulloch*, 1971-NMSC-017, 82 N.M. 296, 480 P.2d 691.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 177.

60-3A-9. Administrative authority and powers.

A. For the purpose of administering the licensing provisions of the Liquor Control Act [60-3A-1 NMSA 1978], the director is authorized to examine and to require the production of any pertinent records, books,

information or evidence, to require the presence of any person and to require him to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. The director, through the legal counsel for the alcohol and gaming division of the regulation and licensing department, is vested with the power to issue subpoenas. In no case shall a subpoena be made returnable less than five days from the date of service.

C. A subpoena issued by the legal counsel for the alcohol and gaming division of the regulation and licensing department shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena, and shall bear the seal of the department and be attested to by the director.

D. After service of a subpoena upon him, if a person neglects or refuses to appear or produce records or other evidence in response to the subpoena or neglects or refuses to give testimony, as required, the director may invoke the aid of the New Mexico district courts in the enforcement of the subpoena. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce his books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. The alcohol and gaming division of the regulation and licensing department shall require criminal history background checks for purposes of administering the licensing provisions of the Liquor Control Act. For purposes of conducting the criminal history background check, the alcohol and gaming division shall require the fingerprinting of applicants for liquor licenses as required by the Liquor Control Act. Fingerprint cards shall be submitted by the director to the department of public safety records bureau for processing through the federal bureau of investigation. The director shall establish procedures within the alcohol and gaming division to maintain the confidentiality of information received from the department of public safety and the federal bureau of investigation.

History: Laws 2001, ch. 86, § 6.

Effective dates. — Laws 2001, ch. 86, § 10 makes the act effective July 1, 2001.

60-3A-10. Administrative rules and orders; presumption of correctness.

A. The director shall issue and file as required by law all rules and orders necessary to administer the licensing provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

B. Directives issued by the director shall be in form substantially as follows:

- (1) rules are written statements of the director, of general application to licensees, interpreting and exemplifying the statutes to which they relate;
- (2) rulings are written statements of the director interpreting the statutes to which they relate and are of limited application to one or a small number of licensees; and
- (3) orders are written statements of the director to implement his decision after a hearing.

C. To be effective, a rule shall first be issued as a proposed rule and filed for public inspection in the office of the director. Distribution of the rule shall be made to interested persons and their comments shall be invited. After the proposed rule has been on file for thirty days and a public hearing has been held, the director may issue it as a final rule by filing as required by law.

D. The director shall furnish a copy of the rules to all licensees and other interested persons at a nominal cost.

E. A rule or order issued by the director is presumed to be a proper implementation of the licensing provisions of the Liquor Control Act.

F. All rules and orders shall be applied prospectively only.

History: Laws 2001, ch. 86, § 7.

Effective dates. — Laws 2001, ch. 86, § 10 makes the act effective July 1, 2001.

60-3A-11. Written decisions by director.

Every decision by the director relating to the granting or denial of a license, the transfer of a license or the revocation or suspension of a license, or other disposition of a charge against

a licensee, shall be accompanied by a written order containing findings of fact and the specific grounds relied upon for the decision.

History: Laws 2001, ch. 86, § 8.

Effective dates. — Laws 2001, ch. 86, § 10 makes the act effective July 1, 2001.

60-3A-12. Partially consumed bottle of wine; licensed premises.

A. Notwithstanding any other provision of law, a dispenser, canopy licensee or restaurant licensee may permit a customer of the licensee to remove from the licensed premises one opened bottle of partially consumed wine; provided that:

(1) the customer has purchased a full-course meal and a bottle of wine and consumed a portion of the bottle of wine with the meal on the licensed premises; and

(2) the dispenser, canopy licensee or restaurant licensee or an agent or employee of the dispenser, canopy licensee or restaurant licensee attaches the customer receipt issued for the bottle of wine and reseals the bottle of partially consumed wine by reinserting a cork and sealing the bottle in a tamper-proof bag.

B. Notwithstanding any other provision of law, a winery licensee may permit a customer of the licensee to remove from the licensed premises one opened bottle of partially consumed wine; provided that the winery licensee or an agent or employee of the winery licensee attaches the customer receipt issued for the bottle of wine and reseals the bottle of partially consumed wine by reinserting a cork and sealing the bottle in a tamper-proof bag.

C. When operating a motor vehicle, the customer shall possess and transport the partially consumed bottle of wine in accordance with Section 66-8-138 NMSA 1978.

History: Laws 2007, ch. 78, § 1; 2019, ch. 58, § 1.

The 2019 amendment, effective June 14, 2019, provided for winery licensees to permit certain customers to

remove from the licensed premises a partially consumed bottle of wine; and added a new Subsection B and redesignated former Subsection B as Subsection C.

60-3A-13. Prohibited sale of certain spirituous liquors.

A liquor license holder shall not sell for consumption off premises closed containers containing fewer than three fluid ounces of spirituous liquors.

History: 1978 Comp., § 60-3A-13, enacted by Laws 2021, ch. 7, § 6.

Effective dates. — Laws 2021, ch. 7, § 37 made Laws 2021, ch. 7, § 6 effective July 1, 2021.

ARTICLE 4

Department of Alcoholic Beverage Control

(Repealed by Laws 1981, ch. 39, § 128.)

60-4-1 to 60-4-10. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-4-1 through 60-4-10 NMSA 1978, relating to the department of alcoholic beverage control, effective July 1, 1981. For

present provisions, see 60-4B-1 through 60-4B-8 NMSA 1978.

ARTICLE 4A

Conflict of Interest in Department

(Repealed by Laws 1981, ch. 39, § 128.)

60-4A-1, 60-4A-2. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-4A-1, 60-4A-2 NMSA 1978, relating to conflict of interest, effective July 1, 1981.

ARTICLE 4B**Special Investigations Division**

Sec.

60-4B-1. Repealed.

60-4B-2. Repealed.

60-4B-3. Repealed.

60-4B-4. Recompiled.

Sec.

60-4B-4.1. Recompiled.

60-4B-5, 60-4B-6. Repealed.

60-4B-7. Repealed.

60-4B-8, 60-4B-9. Repealed.

60-4B-1. Repealed.

Repeals. — Laws 2015, ch. 3, § 45 repealed 60-4B-1 NMSA 1978, as enacted by Laws 1981, ch. 39, § 4, relating to special investigations division, director, effective July 1,

2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

60-4B-2. Repealed.

Repeals. — Laws 2015, ch. 3, § 45 repealed 60-4B-2 NMSA 1978, as enacted by Laws 1981, ch. 39, § 5, relating to powers and duties of the director, effective July 1, 2015.

For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

60-4B-3. Repealed.

Repeals. — Laws 1989, ch. 204, § 26 repealed 60-4B-3 NMSA 1978, as enacted by Laws 1981, ch. 39, § 6, relating to the legal advisor, effective July 1, 1989.

60-4B-4. Recompiled.

Recompilations. — Laws 2015, ch. 3, § 30 recompiled and amended former 60-4B-4 NMSA 1978 as 60-3A-8.1 NMSA 1978, effective July 1, 2015.

60-4B-4.1. Recompiled.

Recompilations. — Laws 2015, ch. 3, § 29 recompiled and amended former 60-4B-4.1 NMSA 1978 as 60-3A-6.1 NMSA 1978, effective July 1, 2015.

60-4B-5, 60-4B-6. Repealed.

Repeals. — Laws 2001, ch. 86, § 9 repealed 60-4B-5 NMSA 1978, as enacted by Laws 1981, ch. 39, § 8, relating to the director's regulations, orders and rulings, effective July 1, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 60-3A-9 and 60-3A-10 NMSA 1978.

Laws 2001, ch. 86, § 9 repealed 60-4B-6 NMSA 1978, as enacted by Laws 1981, ch. 39, § 9, relating to the written decision of the director concerning licenses, effective July 1, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 60-3A-11 NMSA 1978.

60-4B-7. Repealed.

Repeals. — Laws 2015, ch. 3, § 45 repealed 60-4B-7 NMSA 1978, as enacted by Laws 1981, ch. 39, § 10, relating to report to the governor, effective July 1, 2015. For

provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

60-4B-8, 60-4B-9. Repealed.

Repeals. — Laws 1989, ch. 204, § 26 repealed 60-4B-8 and 60-4B-9 NMSA 1978, as enacted by Laws 1981, ch. 39, § 11 and Laws 1987, ch. 333, § 5, relating to training

of alcoholic beverage control agents and termination of agency life, effective July 1, 1989.

ARTICLE 4C**Alcoholic Beverage Control Commission**

(Repealed by Laws 1987, ch. 254, § 27.)

60-4C-1 to 60-4C-3. Repealed.

Repeals. — Laws 1987, ch. 254, § 27 repeals 60-4C-1 through 60-4C-3 NMSA 1978, as enacted by Laws 1981, ch. 39, §§ 12-14, relating to the alcoholic beverage control

commission, effective July 1, 1987. For provisions of former sections, see 1981 Replacement Pamphlet.

ARTICLE 5**Local Option**

(Repealed by Laws 1981, ch. 39, § 128.)

60-5-1, 60-5-2. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-5-1, 60-5-2 NMSA 1978, relating to elections for local option,

effective July 1, 1981. For present provisions, see 60-5A-1, 60-5A-2 NMSA 1978.

ARTICLE 5A**Local Option**

Sec.

60-5A-1. Elections for local option.

Sec.

60-5A-2. Resubmission of local option question.

60-5A-1. Elections for local option.

Any municipality containing more than five thousand persons according to the latest United States census, whether the county in which that municipality is situated has adopted the local option provisions of the Liquor Control Act or any former act or not, or any county in the state may adopt local option in the county or municipality upon the following terms and conditions:

A. the qualified electors of a proposed local option district may petition the governing body by filing a petition in the appropriate office to hold an election for the purpose of determining whether the county or municipality shall adopt the local option provisions of the Liquor Control Act. If the number of the signatures of the electors on the petition equals or exceeds five percent of the number of qualified electors of the district, the governing body shall call an election within ninety days of the verification of the petition; provided that the date is not in conflict with the provisions of Section 1-24-1 NMSA 1978. The governing body shall refuse to recognize the petition if more than three months have elapsed between the date of the first signature and the filing of the petition. The election also may be initiated by a resolution adopted by the governing body of the proposed local option district without a petition having been submitted;

B. the election shall be called, conducted, counted and canvassed pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978];

C. except as otherwise provided in this section, contests, recounts and rechecks shall be permitted as provided for in the case of candidates. Applications for contests, recounts or rechecks may be filed by any person who voted in the election, and service shall be made upon the county clerk or municipal clerk as the case may be;

D. if a majority of all the votes cast at the election is cast in favor of the sale, service or public consumption of alcoholic beverages in the county or municipality, the chair of the governing body shall declare by order entered upon the records of the county or municipality that the county or municipality has adopted the local option provisions of the Liquor Control Act and shall notify the department of the results;

E. if an election is held under the provisions of the Liquor Control Act in a county that contains within its limits a municipality of more than five thousand persons according to the latest United States census, it is not necessary for the qualified electors in the municipality to file a separate petition asking for a separate or different vote on the question of adopting the local option provisions of the Liquor Control Act by the municipality. The election in the county shall be conducted so as to separate the votes in the municipality from those in the remaining parts of the county. If a majority of the voters in the county, including the voters in the municipality, votes against the sale, service or public consumption of alcoholic beverages in the county, the county shall not adopt the local option provisions of the Liquor Control Act; but if a majority of the votes in the municipality is in favor of the sale, service or public consumption of alcoholic beverages, the municipality shall have adopted the local option provisions of the Liquor Control Act. Nothing contained in this subsection shall prevent any municipality from having a separate election under the terms of this section;

F. a county or municipality composing a local option district under the provisions of the Liquor Control Act or a former act may vote to discontinue the sale, service or public consumption of alcoholic beverages in the local option district; the discontinuance shall become effective on the ninetieth day after the local option election is held; and

G. nothing in this section shall invalidate any local option election held pursuant to any former act prior to July 1, 1981.

History: Laws 1981, ch. 39, § 15; 1985, ch. 208, § 124; 1987, ch. 323, § 27; 2018, ch. 79, § 98; 2019, ch. 212, § 235.

Cross references. — For registration for elections, see 1-4-1 NMSA 1978 et seq.

The 2019 amendment, effective April 3, 2019, revised the timing of an election for the purpose of determining whether the county or municipality shall adopt the local option provisions of the Liquor Control Act, and provided that the election may also be initiated by a resolution adopted by the governing body of the proposed local option district without a petition having been submitted; in Subsection A, after "governing body shall call an election within", deleted "seventy-five" and added "ninety", after "verification of the petition"; added "provided that the date is not in conflict with the provisions of Section 1-24-1 NMSA 1978", after "The", deleted "date of the filing of the petition shall be the date of the filing of the last petition that brings the number of signatures up to the required five percent; provided, however, that the", and after "filing of the petition.", deleted "necessary to bring the number of signatures on the petition up to five percent" and added the remainder of the subsection; in Subsection B, after "counted and canvassed", deleted "substantially in the manner provided by law for general elections within the county or special elections within the municipality, except as otherwise provided in this section" and added "pursuant to the provisions of the Local Election Act"; deleted former Subsection C and redesignated former Subsections D and E as Subsections C and D, respectively; in Subsection C, after "case of candidates", deleted "for

county office in general elections or as provided for in the case of special elections within the municipality"; deleted former Subsection F and redesignated former Subsections G through I as Subsections E through G, respectively; and in Subsection E, deleted "registered" preceding "qualified electors".

The 2018 amendment, effective July 1, 2018, made conforming changes as a result of the repeal of the School Election Law and the Municipal Election Code; deleted "municipal" preceding "elections" throughout the section; and in Subsection F, after each occurrence of "primary", added "or", after "general", deleted "municipal or school district".

ANNOTATIONS

Contest and recount provisions of Election Code are inapplicable to local option elections. *State ex rel. Denton v. Vinyard*, 1951-NMSC-030, 55 N.M. 205, 230 P.2d 238 (decided under prior law).

Discretion as to denial of transfers. — Once a municipality has decided to allow liquor sales, the discretion the city council has to deny a transfer on moral grounds must be based on the moral effects of the operation by a specific applicant or at a particular location. *Dick v. City of Portales*, 1994-NMSC-092, 118 N.M. 541, 883 P.2d 127.

"Local option district" defined. — The term "local option district" must be read to mean any county which has voted to approve the sale of alcoholic beverages, or any incorporated municipality which falls within such a county, or any incorporated municipality over 5,000 which

has independently approved the sale of alcoholic beverages. 1981 Op. Att'y Gen. No. 81-09.

For the purpose of placing the question of Sunday sales on the general election ballots, each county except Roosevelt and Curry, which have rejected local option district status, and the incorporated municipalities of Clovis and Portales, which have independently voted to become local option districts, are considered "local option districts." 1982 Op. Att'y Gen. No. 82-15.

Election invalid when it conflicts with state or municipal election. — The provision of Subsection A, which requires election to be called within 60 (now 75) days after filing of the petition, is invalidated when it conflicts with a state or municipal election, since it was evident intention of the legislature not to have a local option election conflict therewith. 1943-44 Op. Att'y Gen. No. 44-4477.

Where initial petition bears insufficient signatures, the board of county commissioners must accept additional names submitted and consider the aggregate of petitions submitted within the three-month period. 1951-52 Op. Att'y Gen. No. 51-5379.

"General election" defined. — The term "general election" has been defined as the biennial election held throughout the state for choosing state and county officers and national representatives in the congress. 1977 Op. Att'y Gen. No. 77-17.

Election under this section may be held in conjunction with county bond election so long as the scheduling and other requirements of the two elections are compatible. 1981 Op. Att'y Gen. No. 81-09.

"Manner" defined. — "Manner" is defined as the mode or method in which something is done or happens;

a mode of procedure or way of acting. 1977 Op. Att'y Gen. No. 77-17.

Absent Voter Act applicable. — The Absent Voter Act, Sections 1-6-1 to 1-6-18 NMSA 1978, is applicable to local option district elections, thereby directing the absentee voting procedures to be followed in such elections. 1977 Op. Att'y Gen. No. 77-17.

Law reviews. — For comment, "Intoxicating Liquors Price Control - Fair Trade and Minimum Markups," see 4 Nat. Resources J. 189 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 85.

Federal constitutional and legislative provisions as to intoxicating liquor as affecting state legislation, 26 A.L.R. 672, 70 A.L.R. 132.

Submission of question to electors of municipality as only way in which sale of intoxicants may be entirely prohibited, under state liquor control act, 113 A.L.R. 1386.

Constitutional and statutory provisions establishing local option as reviving, modifying, or repealing by implication prior laws penalizing transportation, 134 A.L.R. 434.

Operation and effect, in dry territory, of general state statute making sale or possession for sale of intoxicating liquor, without a license, an offense, 8 A.L.R.2d 750.

Change of "wet" or "dry" status fixed by local option election by change of name, character or boundaries of voting unit without later election, 25 A.L.R.2d 863.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

48 C.J.S. Intoxicating Liquors § 71.

60-5A-2. Resubmission of local option question.

In any local option district in which the local option provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or former act have been rejected by the voters, it shall be permissible after the expiration of two years from the date of the election at which the local option provisions of the Liquor Control Act or any former act were rejected, to have another local option election in the district by following the procedure provided for in Section 15 [60-5A-1 NMSA 1978] of the Liquor Control Act. At the option of the petitioners referred to in Subsection A of Section 15 of that act, it shall be permissible to resubmit to the voters of one district not only the question of the sale, service or public consumption of alcoholic beverages, but it shall also be permissible to petition for a local option election for the purpose of submitting to the voters of the district the question of permitting the sale of alcoholic beverages by retailers only in the district.

History: Laws 1981, ch. 39, § 16.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 109.

48 C.J.S. Intoxicating Liquors § 73.

ARTICLE 6

Powers of Municipalities and Counties to Regulate Sales

(Repealed by Laws 1981, ch. 39, § 128.)

60-6-1. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-6-1 NMSA 1978, relating to the power of municipalities and counties to regulate sales, effective July 1, 1981.

ARTICLE 6A

State Licenses

Sec.	Sec.
60-6A-1. Wholesaler's license.	60-6A-21. Short title.
60-6A-2. Retailer's license.	60-6A-22. Definitions.
60-6A-3. Dispenser's license.	60-6A-23. Repealed.
60-6A-4. Restaurant license.	60-6A-24. Wine blender's license.
60-6A-5. Club licenses.	60-6A-25. Repealed.
60-6A-6. Manufacturer's license.	60-6A-26. Wine exporter's license.
60-6A-6.1. Craft distiller's license.	60-6A-26.1. Small brewer's license.
60-6A-7. Nonresident license.	60-6A-26.2. Beer bottler's license.
60-6A-8. Wine bottler's license.	60-6A-27. License fees.
60-6A-9. Public service license.	60-6A-28. Nonresident licenses.
60-6A-10. Governmental license.	60-6A-29. Wine wholesaler's license.
60-6A-11. Winegrower's license.	60-6A-30. Posting of warnings.
60-6A-11.1. Direct wine shipment permit; authorization; restrictions.	60-6A-31. State fair; golf courses; ski areas; alcoholic beverage sales restrictions.
60-6A-12. Special dispenser's permits; state and local fees.	60-6A-32. Interstate wine tastings; competitions; permits.
60-6A-13. Registration to transport.	60-6A-33. Tasting permit; fees.
60-6A-14. Sacramental wine.	60-6A-34. Special bed and breakfast dispensing license; fees; limitations.
60-6A-15. License and permit fees.	60-6A-35. Small brewer and winegrower limited wholesaler's license.
60-6A-16. Proration of fees.	60-6A-36. Redeemable coupons prohibited.
60-6A-17. Issuance of licenses and collection of fees.	60-6A-37. Alcoholic beverage delivery permit; third party delivery license.
60-6A-18. Limitation on number of licenses; exceptions.	60-6A-38. Study effects of delivery of alcohol.
60-6A-19. No property right in license; exception.	
60-6A-20. Vested rights of licensees operating breweries, distilleries, rectifying plants or wineries.	

60-6A-1. Wholesaler's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a license as a wholesaler of alcoholic beverages.

B. No wholesaler shall sell, offer for sale or ship alcoholic beverages not received at and shipped from the premises specified in the wholesaler's license. As used in this section, "received at and shipped from" means that all alcoholic beverages shall be unloaded at the wholesaler's licensed premises and placed into inventory before being sold and shipped to a licensed retailer.

C. No wholesaler shall sell or offer for sale alcoholic beverages to any person other than the holder of a New Mexico wholesaler's, retailer's, dispenser's, canopy, restaurant or club license, a governmental licensee or its lessee or an enterprise owned, operated or licensed by an Indian nation, tribe or pueblo within the state in conformity with an ordinance duly adopted by the Indian nation, tribe or pueblo having jurisdiction over the situs of the transaction within the area of Indian country, certified by the secretary of the interior, published in the federal register, according to the laws of the United States.

History: Laws 1981, ch. 39, § 18; 1993, ch. 68, § 5; 1995, ch. 203, § 2.

The 1995 amendment, effective April 6, 1995, in Subsection C, added the language beginning "or an enterprise" at the end of the Subsection and made a minor stylistic change.

The 1993 amendment, effective July 1, 1993, inserted the second sentence of Subsection B.

ANNOTATIONS

Out-of-state shipment requires permit. — If the state excise tax has been paid on alcoholic liquors which

a wholesaler ships out of New Mexico, a refund can be made pursuant to Section 7-17-11 NMSA 1978 upon adequate proof of out-of-state shipment. Further, shipment out of the state requires a permit from the division (now director of alcohol and gaming division) even though the state excise tax has been paid. 1963-64 Op. Att'y Gen. No. 63-01.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 126.

48 C.J.S. Intoxicating Liquors § 128.

60-6A-2. Retailer's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a retailer's license for the retail sale of alcoholic beverages.

B. A retailer's license, when issued, shall only be used by the person to whom the license is issued and shall only be used within the licensed premises, pursuant to provisions of the Liquor Control Act.

C. In any local option district within a class B county having a population of between fifty-six thousand and fifty-seven thousand according to the 1980 federal decennial census, a person with a retailer's or dispenser's license that sells retail gasoline on the premises shall not sell alcoholic beverages other than beer with less than ten percent alcohol by volume.

History: Laws 1981, ch. 39, § 19; 2021, ch. 7, § 7.

The 2021 amendment, effective July 1, 2021, prohibited certain retailer's and dispenser's license holders from selling alcoholic beverages other than beer with less than ten percent alcohol by volume; and added Subsection C.

authorize the transfer of a retailer's or dispenser's license from one county to another. 1967 Op. Att'y Gen. No. 67-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 272.

48 C.J.S. Intoxicating Liquors § 121.

ANNOTATIONS

Director cannot authorize transfer of license from county to county. — The director has no power to

60-6A-3. Dispenser's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a dispenser's license for the sale of alcoholic beverages.

B. A dispenser's license, when issued, shall only be used by the person to whom the license is issued and shall only be used within the licensed premises, pursuant to provisions of the Liquor Control Act.

C. In any local option district within a class B county having a population of between fifty-six thousand and fifty-seven thousand according to the 1980 federal decennial census, a person with a dispenser's license that sells retail gasoline on the premises shall not sell alcoholic beverages other than beer with less than ten percent alcohol by volume.

History: Laws 1981, ch. 39, § 20; 2021, ch. 7, § 8.

The 2021 amendment, effective July 1, 2021, prohibited certain dispenser's license holders from selling alcoholic beverages other than beer with less than ten percent alcohol by volume; and added Subsection C.

authorize the transfer of a retailer's or dispenser's license from one county to another. 1967 Op. Att'y Gen. No. 67-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 130.

Hotel or inn, what constitutes, within meaning of liquor statute, 19 A.L.R. 531, 53 A.L.R. 988.

48 C.J.S. Intoxicating Liquors § 135.

ANNOTATIONS

Director cannot authorize transfer of license from county to county. — The director has no power to

60-6A-4. Restaurant license.

A. A local option district may approve the issuance of restaurant licenses for the sale of beer and wine by holding an election on that question pursuant to the procedures set out in Section 60-5A-1 NMSA 1978. The election also may be initiated by a resolution adopted by the governing body of the local option district without a petition from qualified electors having been submitted.

B. A local option district that has approved the issuance of restaurant licenses for the sale of beer and wine is deemed to have approved the issuance of restaurant licenses for the sale of beer, wine and spirituous liquors in restaurants unless the local option district affirmatively adopts an ordinance prohibiting such licenses, except that a local option district within a class B county having a population of between fifty-six thousand and fifty-seven thousand according to the 1980 federal decennial census that has approved the issuance of restaurant licenses for the sale of beer

and wine is deemed not to have approved the issuance of restaurant licenses for the sale of beer, wine and spirituous liquors in restaurants unless the local option district affirmatively adopts an ordinance approving such licenses.

C. A restaurant license issued or renewed on or after July 1, 2021 that permits the sale and service of beer and wine only shall be designated a restaurant A license. The license shall be issued in accordance with the provisions of this section and rules adopted by the department.

D. A restaurant license issued on or after July 1, 2021 that permits the sale and service of beer, wine and spirituous liquors shall be designated a restaurant B license. The license shall be issued in accordance with the provisions of this section and rules adopted by the department.

E. After the approval of restaurant licenses by the qualified electors of the local option district for the sale of beer and wine and upon completion of all requirements in the Liquor Control Act [60-3A-1 NMSA 1978] for the issuance of licenses, a restaurant located or to be located within the local option district may receive a restaurant A license to sell, serve or allow the consumption of beer and wine subject to the following requirements and restrictions:

(1) the applicant shall submit evidence to the department that the applicant has a current valid food service establishment permit;

(2) the applicant shall satisfy the director that the primary source of revenue from the operation of the restaurant will be derived from food and not from the sale of beer and wine;

(3) the director shall condition renewal upon a requirement that no less than sixty percent of gross receipts from the preceding twelve months' operation of the licensed restaurant was derived from the sale of food;

(4) upon application for renewal, the licensee shall submit an annual report to the director indicating the annual gross receipts from the sale of food and from beer and wine sales;

(5) all sales, services and consumption of beer and wine authorized by a restaurant A license shall cease at the time food sales and services cease or at 11:00 p.m., whichever time is earlier;

(6) if Sunday sales have been approved in the local option district, a restaurant licensee may serve beer and wine on Sundays until the time meal sales and services cease or 11:00 p.m., whichever time is earlier; and

(7) a restaurant A license shall not be transferable from person to person but shall be transferable from one location to another location within the same local option district.

F. Upon completion of all requirements in the Liquor Control Act for the issuance of licenses on and after July 1, 2021, and barring the adoption of an opt-out ordinance by the governing body of a local option district, a restaurant located or to be located within the local option district may receive a restaurant B license to sell, serve or allow the consumption of beer, wine and spirituous liquors subject to the following requirements and restrictions:

(1) the applicant shall submit evidence to the department that the applicant has a current valid food service establishment permit;

(2) the applicant shall satisfy the director that the primary source of revenue from the operation of the restaurant will be derived from the sale of food and not from the sale of beer, wine and spirituous liquors;

(3) the director shall condition renewal upon a requirement that no less than sixty percent of gross receipts from the preceding twelve months' operation of the licensed restaurant was derived from the sale of food;

(4) upon application for renewal, the licensee shall submit an annual report to the director indicating the annual gross receipts from the sale of food and from beer, wine and spirituous liquors sales;

(5) all sales, service and consumption of beer, wine and spirituous liquors authorized by a restaurant B license shall cease at the time food sales and services cease or at 11:00 p.m., whichever time is earlier;

(6) a restaurant B licensee shall serve a single patron no more than three drinks containing not more than one and one-half ounces of spirituous liquor during any one visit to the restaurant;

(7) if Sunday sales have been approved in the local option district, a restaurant B licensee may serve beer, wine and spirituous liquors on Sundays until the time meal sales and services cease or 11:00 p.m., whichever time is earlier; and

(8) a restaurant B license shall not be transferable from person to person but shall be transferable from one location to another location within the same local option district.

G. The provisions of Section 60-6A-18 NMSA 1978 shall not apply to restaurant licenses.

H. Nothing in this section shall prevent a restaurant licensee from receiving other licenses pursuant to the Liquor Control Act.

I. A person that has held a restaurant A license in good standing for a period of at least twelve consecutive months shall, upon payment of a fee of five hundred dollars (\$500), be entitled to a restaurant A New Mexico spirituous liquors permit. In addition to being permitted to sell and serve beer and wine as authorized by a restaurant A license, the restaurant A New Mexico spirituous liquors permit shall entitle the licensee to also sell and serve spirituous liquors produced or bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978.

History: Laws 1981, ch. 39, § 21; 2003, ch. 103, § 1; 2019, ch. 212, § 236; 2021, ch. 7, § 9.

The 2021 amendment, effective July 1, 2021, modified certain restaurant license provisions related to spirituous liquors, and established restaurant A and restaurant B licenses, depending on whether the restaurant sells beer and wine only or whether the restaurant sells beer, wine and spirituous liquors; added new Subsections B through D and redesignated former Subsection B as Subsection E; in Subsection E, changed "meals" to "food" throughout, after "local option district", added "for the sale of beer and wine" and after "receive a restaurant", added "A", deleted former Paragraph E(5) and redesignated former Paragraphs E(6) through E(8) as Paragraphs E(5) through E(7), respectively, in Paragraph E(5), after "restaurant", added "A", and after "cease at the time", changed "meal" to "food", in Paragraph E(7), after "restaurant", added "A", after

"person to person", deleted "or" and added "but shall be transferable", and after "another", added "location within the same local option district"; added a new Subsection F and redesignated former Subsections C and D as Subsections G and H, respectively; and added Subsection I.

The 2019 amendment, effective April 3, 2019, in Subsection A, deleted "At any time after the effective date of the Liquor Control Act", and deleted "registered" preceding "qualified electors"; and in Subsection B, in the introductory clause, deleted "registered" preceding "qualified electors".

The 2003 amendment, effective July 1, 2003, in Subsection A, substituted "60-5A-1 NMSA 1978" for "15 of that Act" following "out in Section", added the last sentence; substituted "60-6A-18 NMSA 1978" for "35 of the Liquor Control Act" in Subsection C.

60-6A-5. Club licenses.

A. In any local option district, a club qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a club license.

B. Club licenses shall not be transferred from one owner to another. A club license may be transferred from one location to another upon compliance with the provisions of the Liquor Control Act. A club license shall not be leased.

C. The provisions of Section 35 [60-6A-18 NMSA 1978] of the Liquor Control Act shall not apply to club licenses.

History: Laws 1981, ch. 39, § 22.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 183.

Grant or renewal of liquor license as affected by fact that applicant held such license in the past, 2 A.L.R.2d 1239.

48 C.J.S. Intoxicating Liquors § 123.

60-6A-6. Manufacturer's license.

In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a manufacturer's license.

History: Laws 1981, ch. 39, § 23.

Temporary provisions. — Laws 2011, ch. 110, § 5 provided that:

A. If a person has submitted an application for a manufacturer's license as a distiller to the director of the alcohol and gaming division of the regulation and licensing department and, on July 1, 2011, the application has not yet been approved, the person may submit a request in writing to the director no later than July 31, 2011 to convert the application from a manufacturer's license as

a distiller to an application for a craft distiller's license in accordance with procedures adopted by the director.

B. If, within one hundred twenty days prior to or subsequent to July 1, 2011, a person obtains approval for a manufacturer's license as a distiller, the person may submit a request in writing to the director of the alcohol and gaming division of the regulation and licensing department to convert the manufacturer's license as a distiller to a craft distiller's license pursuant to procedures adopted by the director and upon payment of licensing fees

as provided in Section 60-6A-27 NMSA 1978. There shall be no refunds of application or licensing fees unless otherwise provided by law.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 126.
48 C.J.S. Intoxicating Liquors § 125.

60-6A-6.1. Craft distiller's license.

A. In any local option district, a person qualified pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], except as otherwise provided in the Domestic Winery, Small Brewery and Craft Distillery Act [60-6A-21 NMSA 1978], may apply for and be issued a craft distiller's license subject to the following conditions:

- (1) the applicant submits evidence to the department that the applicant has a valid and appropriate permit issued by the federal government to be a craft distiller;
- (2) renewal of the license shall be conditioned upon:
 - (a) no less than sixty percent of the gross receipts from the sale of spirituous liquors for the preceding twelve months of the licensee's operation being derived from the sale of spirituous liquors produced by the licensee;
 - (b) the manufacture of no less than five hundred proof gallons of spirituous liquors per license year at the licensee's premises; and
 - (c) submission to the department by the licensee of a report showing the number of proof gallons of spirituous liquors manufactured by the licensee at the licensee's premises and the annual gross receipts from the sale of spirituous liquors produced by the licensee and from the licensee's sale of distilled spirituous liquors produced by other New Mexico licensed craft distillers;
- (3) a craft distiller's license shall not be transferred from person to person or from one location to another;
- (4) the provisions of Section 60-6A-18 NMSA 1978 shall not apply to a craft distiller's license; and
- (5) nothing in this section shall prevent a craft distiller from receiving other licenses pursuant to the Liquor Control Act.

B. A person to whom a craft distiller's license is issued pursuant to this section may do any of the following:

- (1) manufacture or produce spirituous liquors, including aging, filtering, blending, mixing, flavoring, coloring, bottling and labeling;
- (2) store, transport, import or export spirituous liquors;
- (3) sell only spirituous liquors that are packaged by or for the craft distiller to a person holding a wholesaler's license, a craft distiller's license, a manufacturer's license, a small brewer's license or a winegrower's license;
- (4) deal in warehouse receipts for spirituous liquors;
- (5) buy spirituous liquors from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, flavoring, mixing or bottling of spirituous liquors;
- (6) buy or otherwise obtain beer from a small brewer or wine or cider from a winegrower for the purposes described in this subsection;
- (7) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978];
- (8) conduct spirituous liquor, wine, cider or beer tastings and sell, by the glass or by the bottle, or in unbroken packages for consumption off the premises but not for resale, spirituous liquors of the craft distiller's own production or spirituous liquors produced by another New Mexico craft distiller or New Mexico manufacturer on the craft distiller's premises, wine or cider produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978 or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978; and
- (9) at no more than three other locations off the craft distiller's premises, after the craft distiller has paid the applicable fee for a craft distiller's off-premises permit, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department rules for new liquor license locations and after the director has issued a craft distiller's off-premises permit for each off-premises location, conduct spirituous liquor, wine, cider

or beer tastings and sell by the glass, or in unbroken packages for consumption and not for resale, spirituous liquors produced and bottled by or for the craft distiller or spirituous liquors produced and bottled by or for another New Mexico craft distiller or manufacturer, wine or cider produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978 or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978.

C. For a public or private celebration on or off the craft distiller's premises in any local option district permitting the sale of alcoholic beverages, a craft distiller shall pay ten dollars (\$10.00) to the department for a "craft distiller's public celebration permit" or a "craft distiller's private celebration permit" to be issued under rules adopted by the director. Upon request, the department may issue to a craft distiller a public celebration permit for a location at the public celebration that is to be shared with other craft distillers, small brewers and winegrowers.

D. At private celebrations on or off the craft distiller's premises after the craft distiller has paid the applicable fees and been issued the appropriate permit, the craft distiller may sell by the glass spirituous liquors produced by or for the craft distiller, wine or cider produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978 or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978.

E. As used in this section:

- (1) "private celebration" means any celebratory activity that is held in a private or public venue not open to the general public and for which attendance is subject to private invitation; and
- (2) "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis.

History: Laws 2011, ch. 110, § 3; 2015, ch. 102, § 3; 2019, ch. 229, § 4; 2021, ch. 7, § 10.

The 2021 amendment, effective July 1, 2021, revised certain provisions related to a craft distiller's license, allowing New Mexico craft distiller licensees to obtain beer, wine or cider from a small brewer or winegrower; in Subparagraph A(2)(b), after "no less than", changed "one thousand" to "five hundred"; in Paragraph B(3), after "manufacturer's license", added "a small brewer's license or a winegrower's license", added a new Subparagraph B(6) and redesignated former Subparagraphs B(6) through B(8) as Subparagraphs B(7) through B(9), in Subparagraph B(8), after the first occurrence of "spirituous liquor", added "wine, cider or beer", and after "craft distiller's premises", added "wine or cider produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978 or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978", and in Subparagraph B(9), after "spirituous liquor", added "wine, cider or beer", and after "distiller or manufacturer", added "wine or cider produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978 or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978"; in Subsection D, after the third occurrence of "craft distiller", added "wine or cider produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978 or beer produced and bottled by or for a small brewer pursuant to

Section 60-6A-26.1 NMSA 1978"; and deleted former Subsection E and redesignated former Subsection F as Subsection E.

The 2019 amendment, effective July 1, 2019, provided for private celebration craft distillers' permits, and expanded the hours for sales and tastings of spirituous liquors; in Subsection C, after "For a public", added "or private", after "public celebration permit", added "or a craft distiller's private celebration permit", and after "small brewers and winegrowers", deleted "As used in this subsection, 'public celebration' includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or other activity held on an intermittent basis."; added new Subsection D and redesignated former Subsection D as Subsection E; in Subsection E, after "between the hours of", changed "noon" to "11:00 a.m."; and added new Subsection F.

The 2015 amendment, effective July 1, 2015, increased the number of locations that a craft distiller licensee may, after meeting certain requirements, conduct spirituous liquor tastings and sell by the glass spirituous liquors produced and bottled by or for the craft distiller or spirituous liquors produced and bottled by or for another New Mexico craft distiller or manufacturer; in Subsection A, after "person qualified", deleted "under" and added "pursuant to"; and in Paragraph (8) of Subsection B, after "no more than", deleted "two" and added "three".

60-6A-7. Nonresident license.

A. A nonresident manufacturer or wholesaler who qualifies may apply for and be issued a nonresident license.

B. No nonresident wholesaler or manufacturer shall, directly or indirectly or through an affiliate or subsidiary, apply for, be granted or hold a license under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] as a New Mexico wholesaler, manufacturer, dispenser or retailer; provided that a nonresident wholesaler may be granted and hold a New Mexico wholesaler's license only if the business operated, and the New Mexico wholesaler's license, was purchased from an existing wholesaler and is operated as a separate and distinct business from all other businesses of the nonresident wholesaler, including for the purpose of Section 60-8A-6 NMSA 1978, and no

alcoholic beverages are transshipped between any of the other businesses and the business operated under that license.

C. Nonresident licensees may sell, offer for sale or ship into the state alcoholic beverages only to licensed New Mexico manufacturers and wholesalers.

D. Every nonresident licensee or every New Mexico wholesaler or rectifier selling or shipping alcoholic beverages to a New Mexico wholesaler shall mail to the department one duplicate invoice covering all shipments into or sales in the state, stating the prices, together with all terms, concessions, allowances, forbearances and deductions. In cases of shipments, a copy of the bill of lading or way bill shall accompany the invoice mailed to the department. On each invoice for alcoholic beverages, the total number of cases and the total number of liters of alcoholic beverage shall also be noted by the shipper or vendor. The invoice of all shipments or sales shall also state the brand, labels and size of containers of each item, unless shipped or sold in bulk to be bottled by a licensed rectifier or wine bottler using his own label and brand; provided, however, this section shall not apply to intrastate sales and shipments from one New Mexico wholesaler to another wholesaler.

E. The director may suspend or revoke the license of a nonresident licensee or wholesaler who does not comply with the provisions of Subsections B through D of this section.

History: Laws 1981, ch. 39, § 24; 1984, ch. 54, § 1.

Compiler's notes. — Subsection B reads as amended by Laws 1984, ch. 54, § 1.

ANNOTATIONS

Effect of one wholesaler dominating market. — Where one wholesaler in New Mexico so dominates a substantial number of retail dealers that such retail dealers are compelled to purchase substantially all of their distilled spirits from such wholesaler, the practice restrains

and prevents transactions in such distilled spirits between other wholesalers in the state and distillers and distributors elsewhere. *Levers v. Anderson*, 153 F.2d 1008 (10th Cir.), cert. denied, 328 U.S. 866, 66 S. Ct. 1376, 90 L. Ed. 1636 (1946).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 50.

Nonresidents, discrimination against issuance of license, 61 A.L.R. 340, 112 A.L.R. 63.

48 C.J.S. Intoxicating Liquors § 113.

60-6A-8. Wine bottler's license.

Before any wholesaler whose license permits the sale of wine for resale packages wine for resale, he shall procure from the department a wine bottler's license.

History: Laws 1981, ch. 39, § 25; 1988, ch. 60, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 124.

60-6A-9. Public service license.

A. Every person selling alcoholic beverages to travelers on trains or airplanes within the state shall secure a public service license from the department on or before July 1 of each year.

B. A photostatic copy of the license shall be posted in each train car from which alcoholic beverages are sold, or on the premises at each airport where alcoholic beverages are stored and issued to airplanes.

History: Laws 1981, ch. 39, § 26.

ANNOTATIONS

Federal preemption. — New Mexico's regulatory scheme of airlines' alcoholic beverage services provided to passengers is impliedly preempted as it falls within the field of aviation safety that congress intended federal law to occupy exclusively. However, the twenty-first

amendment of the United States constitution requires a balancing of New Mexico's core powers and the federal interests underlying the FAA. *US Airways, Inc. v. O'Donnell*, 627 F.3d 1318 (10th Cir. 2010).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 132.
48 C.J.S. Intoxicating Liquors § 20.

60-6A-10. Governmental license.

A. A governmental entity may sell alcoholic beverages directly or through its lessee at a governmental facility if the governing body applies to the director for a governmental license. The

governmental entity and its lessee shall be subject to all state laws and regulations governing dispensers.

B. A governmental license may be leased to a qualified lessee and may only be used by the lessee for its operation during events authorized by the governmental entity at the governmental facility designated on the governmental license. The governmental entity and its lessee shall not sell alcoholic beverages for consumption off the licensed premises. On the licensed premises of a governmental facility, the sale or service of alcoholic beverages in unbroken packages is allowed. Alcoholic beverages shall not be removed from the licensed premises of a governmental facility. A server as defined in Section 60-6E-3 NMSA 1978 is not required to be present in a suite to serve alcoholic beverages to the person leasing the suite or the person's guests.

C. A governmental entity holding a governmental license shall annually and not less than sixty days prior to the date for renewal of its license submit to the director documentary proof that its lessee is fully qualified to be a lessee of a governmental license. If the director finds that the lessee is qualified to lease a governmental license, the director shall renew the license for an additional period of one year. If the director determines that the proof is inadequate, the director shall notify the governing body of the decision and shall conduct a hearing as provided by law. If the director finds that the lessee does not qualify and the governmental entity does not change its lessee, the director shall revoke the license.

D. The provisions of Section 60-6A-18 NMSA 1978 shall not apply to governmental licenses.

E. For the purposes of this section:

(1) "governmental entity" means a municipality, a county, a state fair that is held for less than ten days per year, the state fair commission, a state museum, a state university or the spaceport authority;

(2) "governmental facility" means locations on property owned or operated by a governmental entity, including county fairs; state fairs held for less than ten days per year; convention centers; airports; civic centers; food service facilities in state museums; auditoriums; all facilities on the New Mexico state fairgrounds; facilities used for athletic competitions; golf courses, including golf courses required to be used for municipal purposes notwithstanding that there may be an existing club license at the same location operated by the same club licensee; other facilities used for cultural or artistic performances; and all spaceport authority facilities;

(3) "lessee" means an individual, corporation, partnership, firm or association that fulfills the requirements set forth in Subsections A through D of Section 60-6B-2 NMSA 1978; and

(4) "suite" means a room or area of seating at an event, separated from the general seating, leased to a person for that person's exclusive use during events and at any other time throughout the year.

F. The provisions of Section 60-6B-10 NMSA 1978, with respect to golf courses owned by a governmental entity and civic centers owned and operated by a governmental entity, shall not apply to governmental licenses.

History: Laws 1981, ch. 39, § 27; 1989, ch. 379, § 1; 1992, ch. 14, § 1; 2002, ch. 108, § 1; 2003, ch. 117, § 1; 2015, ch. 117, § 1; 2016, ch. 68, § 1; 2021, ch. 7, § 11.

The 2021 amendment, effective July 1, 2021, allowed governmental entities holding a governmental license to sell alcohol at government facilities and suites, instead of at municipal baseball parks and skyboxes; in Subsection B, after each occurrence of "licensed premises of a", changed "municipal baseball park" to "governmental facility", and replaced each occurrence of "skybox" with "suite"; and in Paragraph E(2), after "spaceport authority facilities", deleted "but 'governmental facility' does not include tennis facilities", deleted former Paragraph E(4) and redesignated former Paragraph E(5) as new Paragraph E(4), and in Paragraph E(4), changed "skybox" to "suite", after "area of seating", changed "of a municipal baseball park" to "at an event", after "general seating", deleted "and usually located in the upper decks of the park", and after "during", changed "baseball games" and to "events".

The 2016 amendment, effective May 18, 2016, amended the Liquor Control Act by including the

Spaceport Authority in the list of governmental entities eligible for governmental liquor licenses; in Subsection E, Paragraph (1), after "state museum", deleted "or", and after "state university", added "or the spaceport authority"; and in Paragraph (2), after "artistic performances", added "and all spaceport authority facilities".

The 2015 amendment, effective June 19, 2015, amended the Liquor Control Act by removing the restriction that a governmental entity that sells alcoholic beverages at a governmental facility that is a food service facility in a state museum or a municipal golf course may only sell beer and wine; in the first sentence of Subsection A, deleted "Except as provided in Subsection G of this section, a" and added "A"; in Subsection B, after "leasing the skybox or", deleted "his" and added "the person's"; in Subsection C, after "proof is inadequate", deleted "he" and added "the director", and after "governing body of", deleted "his" and added "the"; in Paragraph (4) of Subsection E, after "facility owned by a", deleted "government" and added "governmental"; in Subsection F, after "NMSA 1978", deleted "as regards" and added "with respect";

deleted Subsection G which restricted the sale of alcoholic beverages to beer and wine only for governmental entities that sold alcoholic beverages at state museums and municipal golf courses.

The 2003 amendment, effective June 20, 2003, inserted "On the licensed premises of a municipal baseball park, the sale or service of alcoholic beverages in unbroken packages is allowed. Alcoholic beverages shall not be removed from the licensed premises of a municipal baseball park. A server as defined in Section 60-6E-3 NMSA 1978 is not required to be present in a skybox to serve alcoholic beverages to the person leasing the skybox or his guests." at the end of Subsection B; inserted "a state museum" following "commission," near the end of Subsection E(1); in Subsection E(2), inserted "food service facilities in state museums" following "civic centers" near the middle and substituted "governmental facility" for "the term" near the end; inserted present Subsections E(4) and E(5); and inserted "a food service facility in a state museum or" following "facility that is" near the middle of Subsection G.

The 2002 amendment, effective July 1, 2002, inserted "the New Mexico state fair commission" in Subsection E(1); and inserted "all facilities on the New Mexico state fairgrounds" in Subsection E(2).

The 1992 amendment, effective March 3, 1992, added "Except as provided in Subsection G of this section," in the first sentence of Subsection A; inserted "including golf courses required to be used for municipal purposes notwithstanding that there may be an existing club license at the same location operated by the same club licensee," in Subsection E(2); inserted "and civic centers owned and operated by a governmental entity" in Subsection F; and added Subsection G.

ANNOTATIONS

Quota limitations enforced when licenses issued.

— The director of the department of alcoholic beverage control cannot legally issue a liquor license to a city without regard to the quota limitation imposed under former Section 60-7-29 NMSA 1978. 1975 Op. Att'y Gen. No. 75-41.

60-6A-11. Winegrower's license.

A. A person in this state who produces wine or cider is exempt from the procurement of any other license pursuant to the terms of the Liquor Control Act [60-3A-1 NMSA 1978], but not from the procurement of a winegrower's license. Except during periods of shortage or reduced availability, at least fifty percent of a winegrower's overall annual production of wine shall be produced from grapes or other agricultural products grown in this state pursuant to rules adopted by the director; provided, however, that, for purposes of determining annual production and compliance with the fifty percent New Mexico grown provision of this subsection, the calculation of a winegrower's overall annual production of wine shall not include the winegrower's production of wine for out-of-state wine producer license holders.

B. A person issued a winegrower's license pursuant to this section may do any of the following:

(1) manufacture or produce wine or cider, including blending, mixing, flavoring, coloring, bottling and labeling, whether the wine or cider is manufactured or produced for a winegrower or an out-of-state wine producer holding a permit issued pursuant to the Federal Alcohol Administration Act and a valid license in a state that authorizes the wine or cider producer to manufacture, produce, store or sell wine or cider;

(2) store, transport, import or export wines or ciders;

(3) sell wines or ciders to a holder of a New Mexico winegrower's, wine wholesaler's, wholesaler's, wine exporter's, craft distiller's or small brewer's license or to a winegrower's agent;

(4) transport not more than two hundred cases of wine in a calendar year to another location within New Mexico by common carrier;

(5) deal in warehouse receipts for wine or cider;

(6) sell wines or ciders in other states or foreign jurisdictions to the holders of a license issued under the authority of that state or foreign jurisdiction authorizing the purchase of wine or cider;

(7) buy wine or cider or distilled wine products from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, mixing or bottling of wines or ciders;

(8) buy or otherwise obtain beer from a small brewer or spirituous liquor from a craft distiller for the purposes described in this subsection;

(9) conduct wine, cider, beer or spirituous liquor tastings and sell, by the glass or by the bottle, or sell in unbroken packages for consumption off the premises, but not for resale, wine or cider of the winegrower's own production, wine or cider produced by another New Mexico winegrower on the winegrower's premises, beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978 or spirituous liquor produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978;

(10) at no more than three off-premises locations, conduct wine, cider, beer or spirituous liquor tastings, sell by the glass and sell in unbroken packages for consumption off premises, but not for resale, wine or cider of the winegrower's own production, wine or cider produced by another New Mexico winegrower or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978 or spirituous liquor produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978 after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and the department rules for new liquor license locations;

(11) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978];

(12) at public celebrations on or off the winegrower's premises, after the winegrower has paid the applicable fees and been issued the appropriate permit, to conduct wine or cider tastings, sell by the glass or the bottle, or sell in unbroken packages, for consumption off premises, but not for resale, wine or cider produced by or for the winegrower, beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978 or spirituous liquor produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978;

(13) at private celebrations on or off the winegrower's premises after the winegrower has paid the applicable fees and been issued the appropriate permit, sell:

(a) by the glass or bottle, wine or cider produced by or for the winegrower;

(b) by the glass, beer produced by a small brewer pursuant to Section 60-6A-26.1 NMSA 1978; or

(c) by the drink, spirituous liquors produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978;

(14) sell wine or cider in a growler for consumption off premises; and

(15) in accordance with the provisions of this section that relate to the sale of wine or cider, accept and fulfill an order for wine or cider that is placed via an internet website, whether the financial transaction related to the order is administered by the licensee or the licensee's agent.

C. At public and private celebrations on or off the winegrower's premises in any local option district permitting the sale of alcoholic beverages, the holder of a winegrower's license shall pay ten dollars (\$10.00) to the alcoholic beverage control division of the regulation and licensing department for a "winegrower's public celebration permit" or a "winegrower's private celebration permit" to be issued under rules adopted by the director. Upon request, the alcoholic beverage control division of the regulation and licensing department may issue to a holder of a winegrower's license a public celebration permit for a location at the public celebration that is to be shared with other winegrowers and small brewers.

D. Every application for the issuance or annual renewal of a winegrower's license shall be on a form prescribed by the director and accompanied by a license fee to be computed as follows on the basis of total annual wine or cider produced or blended:

(1) less than five thousand gallons per year, twenty-five dollars (\$25.00) per year;

(2) between five thousand and one hundred thousand gallons per year, one hundred dollars (\$100) per year; and

(3) over one hundred thousand gallons per year, two hundred fifty dollars (\$250) per year.

E. As used in this section:

(1) "private celebration" means any celebratory activity that is held in a private or public venue not open to the general public and for which attendance is subject to private invitation; and

(2) "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis.

History: Laws 1981, ch. 39, § 28; 1985, ch. 15, § 1; 1987, ch. 98, § 2; 1988, ch. 60, § 3; 1993, ch. 329, § 2; 1995, ch. 122, § 1; 1998, ch. 109, § 2; 1999, ch. 211, § 1; 2001, ch. 248, § 1; 2001, ch. 260, § 1; 2005, ch. 216, § 1;

2011, ch. 71, § 1; 2015, ch. 102, § 4; 2015, ch. 105, § 1; 2015, ch. 124, § 1; 2019, ch. 229, § 5; 2021, ch. 7, § 12.

Cross references. — For the Federal Alcohol Administration Act, see Title 27, U.S.C. §§ 201 to 212.

The 2021 amendment, effective July 1, 2021, allowed winegrower's licensees to obtain spirituous liquor from a craft distiller and beer from a small brewer and to conduct tastings, allowed winegrower's licensees to sell, by the drink, spirituous liquors produced and bottled by or for a craft distiller, and removed a provision related to the permissible hours of sale for certain alcoholic beverages; in Paragraph B(3), after "wine exporter's", added "craft distiller's or small brewer's", in Paragraph B(8), after "small brewer", added "or spirituous liquor from a craft distiller", in Paragraph B(9), after the first occurrence of "cider", added "beer or spirituous liquor", and after "Section 60-6A-26.1 NMSA 1978", added "or spirituous liquor produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978", in Paragraph B(10), after the first occurrence of "cider", added "beer or spirituous liquor", and after "Section 60-6A-26.1 NMSA 1978", added "or spirituous liquor produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978", in Paragraph B(12), after "produced by or for the winegrower", added the remainder of the subparagraph, and in Paragraph B(13), added Subparagraph B(13)(c); deleted former Subsection C and redesignated former Subsections D through F as Subsections C through E, respectively; and in Subsection C, replaced each occurrence of "alcohol and gaming" with "alcoholic beverage control".

The 2019 amendment, effective July 1, 2019, provided for private celebration winegrowers' permits, included cider in the provisions of this section, expanded the hours for sales of certain alcoholic beverages, and made technical amendments; after each occurrence of "wine", added "or cider" throughout the section; in Subsection B, Paragraph B(9), after "Section", deleted "60-2A-26.1" and added "60-6A-26.1", added a new Paragraph B(13) and redesignated former Paragraphs B(13) as B(14) as Paragraphs B(14) and B(15); in Subsection C, after "between the hours of", deleted "12:00 noon" and added "11:00 a.m."; in Subsection D, after "At public", added "and private", after "public celebration permit", added "or a winegrower's private celebration permit", and deleted "As used in this subsection, 'public celebration' includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis."; and added Subsection F.

2015 Amendments. — Laws 2015, ch. 124, § 1, effective July 1, 2015, in Subsection A, added "A person in this state who produces wine is", and after "procurement of a winegrower's license", deleted "is a person in this state who produces wine"; in Subsection B, Paragraph (1), after "producer holding permit issued", deleted "by the federal alcohol tax unit of the internal revenue service" and added "pursuant to the Federal Alcohol Administration Act"; added Paragraph (8) of Subsection B and redesignated the succeeding paragraphs accordingly; in Subsection B, Paragraph (9), after "winegrower's own production", deleted "or", and after "winegrower's premises", added "or beer produced and bottled by or for a small brewer pursuant to Section 60-2A-26.1 [60-6A-26.1] NMSA 1978"; in Subsection B, Paragraph (10), after "winegrower's own production", deleted "or", and after "New Mexico winegrower", added "or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978"; and in Subsection C, after "Sales of wine", added "or beer", after "by the glass or bottle, or", added "sell", and after "winegrower's own production", added "or beer produced and bottled by or for a small brewer pursuant to Section 60-6A-26.1 NMSA 1978".

Laws 2015, ch. 105, § 1, effective July 1, 2015, added Paragraph (12) of Subsection B.

Laws 2015, ch. 102, § 4, effective July 1, 2015, in Subsection A, added "A person in this state who produces wine is", after "winegrower's license", deleted "is a person in this state who produces wine"; and added Paragraph (12) of Subsection B.

The 2011 amendment, effective June 17, 2011, permitted winegrowers to produce wine for out-of-state wine producers and provided that wine produced for out-of-state wine producers shall not be included in the calculation of the winegrower's annual production of wine.

The 2005 amendment, effective June 17, 2005, increased from "one hundred" to "two hundred" in Subsection B(4) the number of cases of wine that may be transported; added the right to sell by the glass in Subsection B(9); and deleted the former exception in Subsection C that referred to the limitation in Section 60-7A-1D NMSA 1978.

The 2001 amendment, effective July 1, 2001, in Subsection B, inserted "or wine produced by another New Mexico winegrower" in Paragraphs (8) and (9); deleted Paragraph (12), giving a licensed winegrower the ability to apply for a permit to join other licensed winegrowers to sell wine produced at a common facility; in Subsection D, inserted "alcohol and gaming division of the regulation and licensing" preceding "department" in two places, and substituted "winegrowers and small brewers" for "permittees".

The 1999 amendment, effective April 6, 1999, in Subsection B added present Paragraph (4) and redesignated the subsequent paragraphs accordingly.

The 1998 amendment, effective July 1, 1998, substituted "pursuant to" for "under" near the beginning of Subsection A; in Subsection B, substituted "A" for "Any" near the beginning, deleted "Subsection A of" near the end; inserted "manufacture or" in two places in Paragraph B(1); in Paragraph B(3), deleted "winer's" following "wine wholesaler's," and inserted "or to a winegrower's agent;" near the end; added Paragraph B(4) and redesignated former Paragraphs B(4)-B(7) as Paragraphs B(5)-B(8); substituted "the" for "such a" near the end of Paragraph B(5); rewrote Paragraph B(7); substituted "three" for "two" at the beginning of Paragraph B(8); added Paragraphs B(9)-B(11); in Subsection C, inserted "for" near the beginning, deleted "Paragraphs (6) and (7) of Subsection B of" following "this section shall be permitted", inserted "or public celebration permit" near the middle, inserted "bottle or" following "in unbroken packages", and inserted "for consumption off premises but not for resale" near the end; and in Subsection D, substituted "shall pay" for "upon the payment of" near the beginning and deleted "may conduct tastings, sell in unbroken packages for consumption at other than the public celebration, but not for resale, and sell, for consumption at a public celebration, wine of his own production" near the middle.

The 1995 amendment, effective June 16, 1995, in Subsection C, substituted "Subsection D" for "Subsections C and D" and deleted "in local option districts in which Sunday sales are permitted" preceding "the holder of".

The 1993 amendment, effective June 18, 1993, purported to amend this section but made no change.

ANNOTATIONS

Sunday sales. — Vineyard owners who have a "grower's permit" are not prohibited from selling wine by the bottle on Sunday in those local option districts that permit Sunday liquor sales. 1988 Op. Att'y Gen. No. 88-04.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 211.

48 C.J.S. Intoxicating Liquors § 129.

60-6A-11.1. Direct wine shipment permit; authorization; restrictions.

A. A licensee with a winegrower's license or a person licensed in a state other than New Mexico that holds a winery license may apply to the director for and the director may issue to the applicant a direct wine shipment permit. An application for a direct wine shipment permit shall include:

- (1) contact information for the applicant in a form required by the department;
- (2) an annual application fee of fifty dollars (\$50.00) if the applicant does not hold a winegrower's license;
- (3) the number of the applicant's winegrower's license if the applicant is located in New Mexico or a copy of the applicant's winery license if the applicant is located in a state other than New Mexico; and
- (4) any other information or documents required by the director. Upon approval of an applicant for a permit, the director shall forward to the taxation and revenue department the name of each permittee and the contact information for the permittee.

B. A direct wine shipment permit shall be valid for a permit year. A permittee shall renew a direct wine shipment permit annually as required by the department to continue making direct shipments of wine to New Mexico residents.

C. A permittee may ship:

- (1) not more than two nine-liter cases of wine monthly to a New Mexico resident who is twenty-one years of age or older for the recipient's personal consumption or use, but not for resale; and
- (2) wine directly to a New Mexico resident only in containers that are conspicuously labeled with the words:

"CONTAINS ALCOHOL

SIGNATURE OF PERSON 21 YEARS OR OLDER REQUIRED
FOR DELIVERY".

D. A permittee shall:

- (1) register with the taxation and revenue department for the payment of liquor excise tax and gross receipts taxes due on the sales of wine pursuant to the permittee's activities in New Mexico;
- (2) submit to the jurisdiction of New Mexico courts to resolve legal actions that arise from the shipping by the permittee of wine into New Mexico to New Mexico residents;
- (3) monthly, by the twenty-fifth day of each month following the month in which the permittee was issued a direct wine shipment permit, pay to the taxation and revenue department the liquor excise tax due and the gross receipts tax due; and
- (4) submit to an audit by an agent of the taxation and revenue department of the permittee's records of the wine shipped pursuant to this section to New Mexico residents upon notice and during usual business hours.

E. As used in this section:

- (1) "permit year" means the period between July 1 and June 30 of a year; and
- (2) "permittee" means a person that is the holder of a direct wine shipment permit.

History: 1978 Comp., § 60-6A-11.1, enacted by Laws 2011, ch. 109, § 1.

Effective dates. — Laws 2011, ch. 109, § 3 made Laws 2011, ch. 109, § 1 effective July 1, 2011.

60-6A-12. Special dispenser's permits; state and local fees.

A. Any person holding a dispenser's license in any local option district where a public celebration is to be held may dispense alcoholic beverages at the public celebration upon receiving written approval from the governing body in charge of the public celebration and upon the payment of fifty dollars (\$50.00) to the department for a special dispenser's permit.

B. As used in this section, "public celebration" includes any state fair, county fair, community fiesta, cultural or artistic performance or professional athletic competition of a seasonal nature or activities held on an intermittent basis.

C. In addition to the state fee and if previously provided for by ordinance, the governing body of the local option district in which the public celebration is held may charge an additional fee not to exceed twenty-five dollars (\$25.00) per day for each day the permittee dispenses alcoholic beverages. The permittee shall be subject to all state laws and regulations and all local regulations regulating dispenser's privileges and disabilities. All fees collected by the governing body of the local option district may be used to fund free ride home programs.

D. Any person holding a dispenser's license may be issued a special dispenser's permit by the director allowing the dispensing of alcoholic beverages at a function catered by that business, provided the governing body of the local option district has given the person seeking the permit written approval to dispense alcoholic beverages at the catered function. The permit shall be valid for no more than twelve hours. To apply for the permit, the holder of a dispenser's license shall submit a fee of twenty-five dollars (\$25.00) together with such information as the director may require. The permittee shall be subject to all state laws and regulations and all local regulations except that the permittee shall not be required to suspend the dispensing of alcoholic beverages at the licensed premises solely because of the issuance of the special dispenser's permit.

E. The person holding a dispenser's license and his employees shall be the only persons permitted to dispense alcohol during the function for which the permit was sought. Issuance of the special dispenser's permit is within the director's discretion and is subject to any reasonable requirements imposed by the director.

F. Any person holding a dispenser's license in a local option district in which Sunday sales of alcoholic beverages are not otherwise permitted pursuant to the Liquor Control Act [60-3A-1 NMSA 1978] may dispense beer and wine on Sunday at any public celebration for which it has received a concession from the governing body in charge of the public celebration, provided the governing body of that local option district has by resolution expressly permitted such beer and wine sales on Sunday at that public celebration in accordance with the provisions of this section.

G. Any person holding a dispenser's license who dispenses alcoholic beverages at a church's public celebration under a special dispenser's permit pursuant to this section may donate to the church holding the public celebration any portion of the profits from the sale of alcoholic beverages at that public celebration. Employees of that dispenser or other individuals who have completed a certified alcohol server training program may donate to the church holding a public celebration their services as servers of alcoholic beverages at that public celebration.

History: Laws 1981, ch. 39, § 29; 1989, ch. 144, § 1; 1993, ch. 68, § 6; 1997, ch. 265, § 1; 1998, ch. 79, § 1.

The 1998 amendment effective May 20, 1998, deleted "board or other" following "from the" in Subsections A and F; rewrote Subsection E; and, substituted "pursuant to" for "under" near the beginning of Subsection F.

The 1997 amendment, effective June 20, 1997, added Subsection G.

The 1993 amendment, effective July 1, 1993, substituted "written approval" for "a concession" and "fifty dollars (\$50.00)" for "ten dollars (\$10.00)" in Subsection A; substituted "twenty-five dollars (\$25.00)" for "ten dollars (\$10.00)" in the first sentence of Subsection C; added the final sentence of Subsection C; added the proviso at

the end of the first sentence of Subsection D; substituted "twenty-five dollars (\$25.00)" for "ten dollars (\$10.00)" and deleted "by regulation" at the end of the third sentence of Subsection D; substituted "and all local regulations" for "governing dispenser's privileges and disabilities" in the fourth sentence of Subsection D; added present Subsection E; and redesignated former Subsection E as present Subsection F.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquor, 4 A.L.R.2d 1216.

60-6A-13. Registration to transport.

For the renewal year beginning on July 1, 1998 and every three years thereafter, every common carrier transporting alcoholic beverages into and for delivery within the state shall register with the department and pay a registration fee of fifty dollars (\$50.00).

History: Laws 1981, ch. 39, § 30; 1998, ch. 79, § 2.

The 1998 amendment, effective May 20, 1998, substituted "For the renewal year beginning on July 1, 1998 and every three years thereafter" for "On July 1 of each year" at the beginning of the section and "fifty dollars (\$50.00)" for "fifteen dollars (\$15.00)" at the end.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 131.
48 C.J.S. Intoxicating Liquors § 208.

60-6A-14. Sacramental wine.

No license shall be required of any person to sell wine for use in this state which is to be used exclusively for sacramental or religious purposes when the wine is consigned to any bona fide priest, pastor, bishop, rabbi, preacher or minister of the gospel of any religious faith or denomination and the container, barrel, case or carton is plainly and legibly labeled: "Wine To Be Used Exclusively For Sacramental And Religious Purposes"; no licenses or transportation permit or other permit shall be required for the importation, delivery, transportation or distribution of any such wine when it is consigned to any such bona fide priest, pastor, bishop, rabbi, preacher or minister of the gospel, and the container, barrel, case or carton thereof is plainly and legibly labeled as provided in this section.

History: Laws 1981, ch. 39, § 31.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 75.
48 C.J.S. Intoxicating Liquors §§ 129, 200.

60-6A-15. License and permit fees.

Except for calendar years 2022 through 2031 for license holders who purchased their license during the calendar years 2017 through 2021, who shall be charged no fee for the issuance or renewal of a license, every application for the issuance or renewal of the following licenses and permits shall be accompanied by a fee in the following specified amounts:

- A. manufacturer's license as a distiller, except a brandy manufacturer, three thousand dollars (\$3,000);
- B. manufacturer's license as a brewer, three thousand dollars (\$3,000);
- C. manufacturer's license as a rectifier, one thousand fifty dollars (\$1,050);
- D. wholesaler's license to sell all alcoholic beverages for resale only, two thousand five hundred dollars (\$2,500);
- E. wholesaler's license to sell spirituous liquors and wine for resale only, one thousand seven hundred fifty dollars (\$1,750);
- F. wholesaler's license to sell spirituous liquors for resale only, one thousand five hundred dollars (\$1,500);
- G. wholesaler's license to sell beer and wine for resale only, one thousand five hundred dollars (\$1,500);
- H. wholesaler's license to sell beer for resale only, one thousand dollars (\$1,000);
- I. wholesaler's license to sell wine for resale only, seven hundred fifty dollars (\$750);
- J. retailer's license, one thousand three hundred dollars (\$1,300);
- K. dispenser's license, one thousand three hundred dollars (\$1,300);
- L. canopy license, one thousand three hundred dollars (\$1,300);
- M. restaurant A license, one thousand fifty dollars (\$1,050);
- N. restaurant B license, ten thousand dollars (\$10,000);
- O. club license, for clubs with more than two hundred fifty members, one thousand two hundred fifty dollars (\$1,250), and for clubs with two hundred fifty members or fewer, two hundred fifty dollars (\$250);
- P. wine bottler's license to sell to wholesalers only, five hundred dollars (\$500);
- Q. public service license, one thousand two hundred fifty dollars (\$1,250);
- R. nonresident licenses, for a total billing to New Mexico wholesalers:

(1) in excess of:

\$3,000,000	annually	\$10,500;
1,000,000	annually	5,250;
500,000	annually	3,750;
200,000	annually	2,700;
100,000	annually	1,800;

and

50,000	annually	900;
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and

(2) of \$50,000 or less \$300;

S. wine wholesaler's license, for persons with sales of five thousand gallons of wine per year or less, twenty-five dollars (\$25.00), and for persons with sales in excess of five thousand gallons of wine per year, one hundred dollars (\$100);

T. beer bottler's license, two hundred dollars (\$200);

U. third-party alcohol delivery license, not to exceed one thousand dollars (\$1,000);

V. alcoholic beverage delivery permit, not to exceed three hundred dollars (\$300); and

W. retailer's, dispenser's or canopy licenses, if the licensee held the license on June 30, 2021, there shall be no renewal fee for applications filed by the licensee or successor licensees on or before June 30, 2026.

History: Laws 1981, ch. 39, § 32; 1983, ch. 280, § 1; 1988, ch. 60, § 5; 1989, ch. 241, § 1; 1993, ch. 68, § 7; 1998, ch. 79, § 3; 1999, ch. 276, § 1; 2000, ch. 13, § 1; 2003, ch. 246, § 1; 2021, ch. 7, § 13.

The 2021 amendment, effective July 1, 2021, waived issuance and renewal fees for the calendar years 2022 through 2031 for license holders who purchased their license during the calendar years 2017 through 2021, established fees for new licenses and permits, and waived renewal fees for applications filed before June 30, 2026 for retailer's, dispenser's or canopy licenses, if the licensee held the license on June 30, 2021; in the section heading, after "License", added "and permit"; in the introductory clause, added "Except for calendar years 2022 through 2031 for license holders who purchased their license during the calendar years 2017 through 2021, who shall be charged no fee for the issuance or renewal of a license", after "following licenses", added "and permits", and after "accompanied by a", deleted "license"; in Subsection M, after "restaurant", added "A"; added a new Subsection N and redesignated former Subsections N through S as Subsections O through T, respectively; and added Subsections U through W.

The 2003 amendment, effective July 1, 2003, substituted "one thousand three hundred dollars (\$1,300)" for "one thousand two hundred fifty dollars (\$1,250)" in Subsections J, K and L, and substituted "one thousand fifty dollars (\$1,050)" for "one thousand dollars (\$1,000)" in Subsection M.

The 2000 amendment, effective May 17, 2000, rewrote Subsection N, which read "club license, one thousand two hundred fifty dollars (\$1,250)."

The 1999 amendment, effective June 18, 1999, in Subsection Q, designated the formerly undesignated paragraph as Paragraph (1), in that paragraph, deleted "or less" following "50,000", and added Paragraph (2).

The 1998 amendment, effective May 20, 1998, deleted "annual" following "issuance or" in the introductory paragraph, and rewrote Subsection Q.

The 1993 amendment, effective July 1, 1993, deleted the Subsection A designation at the beginning; designated former Paragraphs (1) through (18) of former Subsection A as Subsections A through R; substituted "one thousand two hundred fifty dollars (\$1,250)" for "one thousand five hundred dollars (\$1,500)" in Subsections G, K to N, and P; added Subsection S; deleted former Subsection B, pertaining to the renewal fee for licenses issued under former acts; and made a minor stylistic change.

ANNOTATIONS

Director unable to apply fee for canceled license to new license. — Liquor chief (now director) is without power to cancel a license issued under one paragraph and then apply the amount paid on such license to the fee requisite to obtaining a license under another paragraph, the full amount being payable for the latter regardless of the number of other licenses which may be held by the particular licensee. 1943-44 Op. Att'y Gen. No. 43-4430.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 233.

Liability for license fee of one who has conducted business without required license, 5 A.L.R. 1312, 107 A.L.R. 652. 48 C.J.S. Intoxicating Liquors § 182.

60-6A-16. Proration of fees.

A. License fees for new licenses issued after the beginning of the license year shall be prorated.

B. Dispenser, retailer, restaurant, club and public service license fees shall be prorated as follows:

(1) licenses issued in the first quarter of the license year for each license type shall be subject to the full amount of the annual license fee;

(2) licenses issued in the second quarter of the license year for each license type shall be subject to three-fourths of the annual license fee;

(3) licenses issued in the third quarter of the license year for each license type shall be subject to one-half of the annual license fee; and

(4) licenses issued in the fourth quarter of the license year for each license type shall be subject to one-fourth of the annual license fee.

C. License fees for all new licenses not provided for in Subsection B of this section, except non-resident licenses and common carrier registrations, shall not be prorated but shall be subject to payment of the full amount of the annual license fee.

D. Nonresident licenses and common carrier registrations shall be issued for a three-year period. The three-year license for nonresident licenses and for common carrier registrations begins July 1, 2013 and every third year subsequently. Nonresident licenses and common carrier registrations issued at any time during the:

(1) first license year shall be subject to payment of the full amount of the three-year license fee;

(2) second license year shall be subject to payment of two-thirds of the three-year license fee; and

(3) third license year shall be subject to payment of one-third of the three-year license fee.

History: Laws 1981, ch. 39, § 33; 1998, ch. 79, § 4; repealed and reenacted by Laws 2015, ch. 86, § 1.

Repeals and reenactments. — Laws 2015, ch. 86, § 1 repealed former 60-6A-16 NMSA 1978, and enacted a new section, effective June 19, 2015.

Temporary provisions. — Laws 2015, ch. 86, § 3 provided:

A. License renewal fees due on August 1, 2015 shall include an additional one-third of the annual license fee for the period from July 1, 2015 through October 31, 2015. All restaurant, club, wholesaler and manufacturer licensees shall be issued temporary licenses prior to June 30, 2015 that shall expire on October 31, 2015 unless renewed. New restaurant or club licenses issued between April 1, 2015 and June 30, 2015 shall require payment of an initial license fee of one-fourth of the annual renewal fee.

B. License renewal fees due on December 1, 2015 shall include an additional two-thirds of the annual license fee for the period of time from July 1, 2015 through February 28, 2016. All licensees that are required to file a renewal application and pay the renewal fee on December 1, 2015 shall be issued temporary licenses prior to June 30, 2015 that expire on February 28, 2016 unless renewed. Public service licenses issued between April 1, 2015 and June 30, 2015 shall require payment of an initial license fee of one-fourth of the annual renewal fee.

The 1998 amendment, effective May 20, 1998, deleted "nonresident licensees" following "wine bottlers" in Subsection B, and added Subsection C.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 183.

60-6A-17. Issuance of licenses and collection of fees.

All licenses provided for pursuant to the Liquor Control Act [60-3A-1 NMSA 1978] shall be issued by the director in strict compliance with the provisions of that act, and license fees shall be collected by the director and remitted to the state treasurer.

History: Laws 1981, ch. 39, § 34.

ANNOTATIONS

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 187.

60-6A-18. Limitation on number of licenses; exceptions.

A. The maximum number of licenses to be issued under the provisions of Sections 60-6A-2 and 60-6A-3 NMSA 1978 shall be as follows:

(1) in incorporated municipalities, not more than one dispenser's or one retailer's license, including canopy licenses which are replaced by dispenser's licenses as provided in Section 60-6B-16 NMSA 1978, for each two thousand inhabitants or major fraction thereof; and

(2) in unincorporated areas of each county, not more than one dispenser's or one retailer's license, including canopy licenses which are replaced by dispenser's licenses as provided in Section 60-6B-16 NMSA 1978, for each two thousand inhabitants or major fraction thereof, excluding the population of incorporated municipalities within the county.

B. For the purpose of this section, the number of inhabitants of a local option district shall be determined by annual population estimates published by the economic development department.

C. Subsection A of this section shall not be construed to prevent any licensee holding a valid license issued under the Liquor Control Act [60-3A-1 NMSA 1978], or his transferee, from continuing the licensed business or from renewing his license, subject to compliance with the Liquor Control Act and department regulations, notwithstanding that the continuance or renewal may result in an excess over the maximum number of licenses permitted in Subsection A of this section.

History: Laws 1981, ch. 39, § 35; 1988, ch. 12, § 1; 1991, ch. 21, § 39.

The 1991 amendment, effective March 27, 1991, deleted "and tourism" following "development" in Subsection B.

ANNOTATIONS

Splitting of single liquor license under lease agreement not permitted. — Splitting of a single liquor license under a lease agreement in order to circumvent this section is not permitted. The state ABC board regulations intend to prevent such splits, and these regulations manifest the public policy of the state; any contracts in violation of the public policy are void. *DiGesú v. Weingardt*, 1978-NMSC-017, 91 N.M. 441, 575 P.2d 950.

Hearings within scope of director's administrative powers. — It is entirely within the administrative powers of the chief of the division of liquor control (now director) to proceed with hearing to determine whether liquor license had originally been issued without authority under the statute. *Petroleum Club Inn Co. v. Franklin*, 1963-NMSC-133, 72 N.M. 347, 383 P.2d 824.

Section constitutional. — This section, as now constituted, is clearly constitutional. The police power of the state to regulate and/or prohibit the possession, sale and dispensing of alcoholic beverages has been upheld against constitutional attack so many times that it is unnecessary to cite authority so holding. 1959-60 Op. Att'y Gen. No. 59-137.

Intent of quota. — The quota provisions of this section are intended to limit the number of liquor licenses allowed in the state. 1979 Op. Att'y Gen. No. 79-03.

Section inapplicable to transfer of existing licenses. — A liquor dispenser's license may not be transferred from one municipality to another even though limitations as to the number of licenses per population apply only to the issuance of new licenses and not to the transfer of existing licenses. A transfer from one municipality to another would be without restriction in this regard but would result in thwarting the legislative intent of limiting the number of licenses that can be issued to any one municipality. 1970 Op. Att'y Gen. No. 70-56.

Quota limitation enforced when licenses issued. — The director cannot legally issue a liquor license to a city without regard to the quota limitation imposed under this section. 1975 Op. Att'y Gen. No. 75-41.

"Major fraction thereof" could only mean more than one half. 1955-56 Op. Att'y Gen. No. 56-6384.

Each incorporated municipality is eligible for one license even though the population of the municipality is less than a major fraction of 2000. 1961-62 Op. Att'y Gen. No. 61-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 133.

Power to limit the number of intoxicating liquor licenses, 124 A.L.R. 825, 163 A.L.R. 581.

Validity of statutory classifications based on population - intoxicating liquor statutes, 100 A.L.R.3d 850.

48 C.J.S. Intoxicating Liquors § 100.

60-6A-19. No property right in license; exception.

A. The holder of any license issued under the Liquor Control Act [60-3A-1 NMSA 1978] or any former act has no vested property right in the license, which is the property of the state; provided that retailer's licenses, dispenser's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978:

(1) shall be considered property subject to execution, attachment, a security transaction, liens, receivership and all other incidents of tangible personal property under the laws of this state, except as otherwise provided in the Liquor Control Act;

(2) may be assigned, transferred from person to person or leased, provided all requirements of the Liquor Control Act and department regulations are fulfilled; and

(3) shall be transferred as personal property upon attachment, execution, repossession by a secured party or lienor, foreclosure by a creditor, appointment of a receiver for the licensee, death of the licensee, filing of a petition of bankruptcy by or for the licensee, incapacity of the licensee or dissolution of the licensee. The director may by rule or regulation determine any application or notice requirement for a person who temporarily holds a license pursuant to this subsection.

B. Any license issued under the Liquor Control Act [60-3A-1 NMSA 1978] may be transferred to any location not otherwise contrary to law within the same local option district where the license is then located, provided all requirements of the Liquor Control Act and department regulations are fulfilled.

History: Laws 1981, ch. 39, § 36; 1991, ch. 257, § 1.

The 1991 amendment, effective June 14, 1991, designated the previously undesignated provisions as Subsection A and Paragraph (1) thereof; in Subsection A, substituted "provided that retailer's licenses,

dispenser's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978" for "provided that until June 30, 1991 licenses issued prior to the effective date of the Liquor Control Act" at the end of the introductory

paragraph and added Paragraphs (2) and (3); and added Subsection B.

ANNOTATIONS

Constitutionality. — This section is constitutional. It does not take existing property interests without due process and it does not unreasonably deprive the owner of a liquor license of all or substantially all of the

beneficial use of his license. *Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, 100 N.M. 342, 670 P.2d 953.

A liquor license is a privilege subject to regulation and not a property right. *Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, 100 N.M. 342, 670 P.2d 953.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liquor license as subject to execution or attachment, 40 A.L.R.4th 927.

Security interests in liquor licenses, 56 A.L.R.4th 1131.

60-6A-20. Vested rights of licensees operating breweries, distilleries, rectifying plants or wineries.

If a permit or license is issued to a person for the operation of a brewery, distillery, rectifying plant or winery, and the permittee or licensee has commenced the operation of the brewery, distillery, rectifying plant or winery under the terms of the permit or license, the permit or license shall be construed to constitute a contract vesting in the licensee, for a period of fifty years from the date of the original issuance of the license or permit, a right to operate the business, which right shall not be impaired by any subsequent legislation or local option election. This section shall not be construed to permit the licensee or permittee to sell its products in this state contrary to the current laws of this state.

History: Laws 1981, ch. 39, § 17.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 108.

60-6A-21. Short title.

Sections 60-6A-21 through 60-6A-28 NMSA 1978 may be cited as the "Domestic Winery, Small Brewery and Craft Distillery Act".

History: 1978 Comp., § 60-6A-21, enacted by Laws 1983, ch. 280, § 2; 1993, ch. 68, § 8; 2011, ch. 110, § 1.

The 2011 amendment, effective July 1, 2011, changed the name of the act to include craft distilleries.

The 1993 amendment, effective July 1, 1993, inserted "and Small Brewery".

60-6A-22. Definitions.

As used in the Domestic Winery, Small Brewery and Craft Distillery Act:

- A. "brandy" means an alcoholic liquor distilled from wine or from fermented fruit juice;
- B. "beer" means any fermented beverage containing more than one-half percent alcohol obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereal in water, and includes porter, beer, ale and stout;
- C. "craft distiller" means a person licensed as a craft distiller who owns or operates a business for the manufacture of spirituous liquors but who does not manufacture more than one hundred fifty thousand proof gallons per license year;
- D. "small brewer" means any person who owns or operates a business for the manufacture of beer but does not manufacture more than two hundred thousand barrels of beer per year;
- E. "proof gallon" means a gallon of liquid at sixty degrees Fahrenheit that contains fifty percent ethyl alcohol by volume or its equivalent;
- F. "public celebration" means any state fair, county fair, community fiesta or cultural or artistic performance;
- G. "wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar, or any such alcoholic beverage to which is added grape brandy, fruit brandy or spirits of wine that is distilled from the particular agricultural products of which the wine is made, and other rectified wine products by

whatever name that do not contain more than fifteen percent added flavoring, coloring and blending material and that contain not more than twenty-four percent alcohol by volume, and includes vermouth;

H. "wine blender" means a person authorized to operate a bonded wine cellar pursuant to a permit issued for that purpose under the internal revenue laws of the United States but who does not have facilities or equipment for the conversion of grapes, berries or other fruit into wine and does not engage in the production of wine in commercial quantities; provided that any person who produces or blends not to exceed three hundred gallons of wine per year shall not, because of such production or blending, be considered a wine blender; and

I. "winer" means a person licensed as a winegrower.

History: 1978 Comp., § 60-6A-22, enacted by Laws 1983, ch. 280, § 3; 1985, ch. 217, § 1; 1998, ch. 109, § 3; 2011, ch. 110, § 2.

The 2011 amendment, effective July 1, 2011, added definitions of "craft distiller" and "proof gallon".

The 1998 amendment, effective July 1, 1998, substituted "a person licensed as a winegrower" for "any person

who has facilities and equipment for the conversion in New Mexico, of grapes, berries or other fruit into wine and is engaged in the commercial production of wine; provided that any person who produces not to exceed two hundred gallons of wine per year for his own consumption shall not, because of such production, be considered a winer" near the beginning of Subsection G.

60-6A-23. Repealed.

Repeals. — Laws 1998, ch. 109, § 8 repeals 60-6A-23 NMSA 1978, enacted by Laws 1983, ch. 280, § 4, relating

to winer's license, effective July 1, 1998. For provisions of former section, see 1997 Cumulative Supplement.

60-6A-24. Wine blender's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], except as otherwise provided in the Domestic Winery and Small Brewery Act [60-6A-21 to 60-6A-28 NMSA 1978], may apply for and be issued a wine blender's license.

B. A wine blender's license authorizes the person to whom it is issued to:

(1) package, rectify, blend, mix, flavor, color, label and export wine, whether manufactured or produced by him or any other person;

(2) sell only wine packaged by or for him to a person holding a New Mexico wine wholesaler's, wholesaler's, winegrower's or wine exporter's license or to a winegrower's agent;

(3) deal in warehouse receipts for wine; and

(4) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

C. A wine blender's license does not authorize the person to whom it is issued:

(1) to crush, ferment and produce wine from grapes, berries and other fruits;

(2) to obtain or be issued a winer's license, a retailer's license or a dispenser's license;

(3) to buy, sell, receive or deliver wine from persons other than authorized licensees; or

(4) to conduct wine tastings or sell for consumption off premises, at retail, or to sponsor wine tastings, either on or off the wine blender's premises.

History: 1978 Comp., § 60-6A-24, enacted by Laws 1983, ch. 280, § 5; 1985, ch. 217, § 3; 1998, ch. 109, § 4.

The 1998 amendment, effective July 1, 1998, added Subsection B and redesignated former Subsection B as Subsection C, rewriting the subsection.

60-6A-25. Repealed.

Repeals. — Laws 2021, ch. 7, § 36 repealed 60-6A-25 NMSA 1978, as enacted by Laws 1983, ch. 280, § 6, relating to brandy manufacturer's license, effective July 1,

2021. For provisions of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

60-6A-26. Wine exporter's license.

A wine exporter's license authorizes the person to whom it is issued, and under regulations prescribed by the director, to sell, deliver or consign wine or brandy manufactured or produced within this state for delivery, use or sale without the state.

History: 1978 Comp., § 60-6A-26, enacted by Laws 1983, ch. 280, § 7. **Cross references.** — For definition of "director," see 60-3A-3G NMSA 1978.

60-6A-26.1. Small brewer's license.

A. In a local option district, a person qualified pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], except as otherwise provided in the Domestic Winery, Small Brewery and Craft Distillery Act, may apply for and be issued a small brewer's license.

B. A small brewer's license authorizes the person to whom it is issued to:

- (1) manufacture or produce beer;
- (2) package, label and export beer, whether manufactured, bottled or produced by the licensee or any other person;
- (3) sell only beer that is packaged by or for the licensee to a person holding a wholesaler's license, a small brewer's license, a craft distiller's license or a winegrower's license;
- (4) deal in warehouse receipts for beer;
- (5) conduct beer, wine, cider and spirituous liquor tastings and sell for consumption on or off premises, but not for resale, beer produced and bottled by, or produced and packaged for, the licensee, beer produced and bottled by or for another New Mexico small brewer on the small brewer's premises or wine or cider produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978 or spirituous liquor produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978;
- (6) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978];
- (7) at public celebrations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's public celebration permit, conduct tastings and sell by the glass or in unbroken packages, but not for resale, beer produced and bottled by or for the small brewer or wine or cider produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978 or spirituous liquor produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978;
- (8) at private celebrations on or off the small brewer's premises after the small brewer has paid the applicable fees for a private celebration permit, sell by the glass, beer produced and bottled by or for the small brewer or wine or cider produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978 or spirituous liquor produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978;
- (9) buy or otherwise obtain wine or cider from a winegrower or spirituous liquor from a craft distiller;
- (10) for the purposes described in this subsection, at no more than three other locations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's off-premises permit, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department rules for new liquor license locations and after the director has issued a small brewer's off-premises permit for each off-premises location, conduct beer tastings and sell by the glass or in unbroken packages for consumption off the small brewer's off-premises location, but not for resale, beer produced and bottled by or for the small brewer, beer produced and bottled by or for another New Mexico small brewer, wine or cider produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978 or spirituous liquor produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978;
- (11) allow members of the public, on the licensed premises and under the direct supervision of the licensee, to manufacture beer for personal consumption and not for resale using the licensee's equipment and ingredients; and

(12) sell beer in a growler for consumption off premises.

C. Renewal of a small brewer's license shall be conditioned upon submission to the department by the licensee of a report showing proof that:

(1) no less than fifty percent of the gross receipts from the sale of beer for the preceding twelve months of the licensee's operation are derived from the sale of beer produced by the licensee; or

(2) the licensee manufactures no less than fifty barrels of beer per license year at the licensee's premises.

D. At public and private celebrations on or off the small brewer's premises in a local option district permitting the sale of alcoholic beverages, the holder of a small brewer's license shall pay ten dollars (\$10.00) to the alcoholic beverage control division of the regulation and licensing department for a "small brewer's public celebration permit" or a "small brewer's private celebration permit" to be issued under rules adopted by the director. Upon request, the alcoholic beverage control division of the regulation and licensing department may issue to a holder of a small brewer's license a public celebration permit for a location at the public celebration that is to be shared with other small brewers and winegrowers.

E. As used in this section:

(1) "private celebration" means any celebratory activity that is held in a private or public venue not open to the general public and for which attendance is subject to private invitation; and

(2) "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis.

History: 1978 Comp., § 60-6A-26.1, enacted by Laws 1985, ch. 217, § 5; 1993, ch. 68, § 9; 1997, ch. 229, § 1; 1998, ch. 111, § 1; 1999, ch. 160, § 1; 2001, ch. 248, § 2; 2001, ch. 260, § 2; 2015, ch. 102, § 5; 2015, ch. 124, § 2; 2019, ch. 229, § 6; 2021, ch. 7, § 14.

Repeals. — Laws 2015, ch. 102, § 10 and Laws 2015, ch. 124, § 3 repealed Laws 2001, ch. 248, § 2, effective July 1, 2015.

The 2021 amendment, effective July 1, 2021, allowed small brewer licensees to sell beer to a craft distiller or winegrower, to conduct beer, wine and spiritous liquor tastings, and to buy or obtain spiritous liquor from a craft distiller; in Paragraph B(3), after "small brewer's license", added "a craft distiller's license or a winegrower's license", in Paragraph B(5), after "conduct beer", added "wine, cider and spiritous liquor", and after "Section 60-6A-11 NMSA 1978", added "or spiritous liquor produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978", in Paragraphs B(7), B(8), and B(10), after "Section 60-6A-11 NMSA 1978", added "or spiritous liquor produced and bottled by or for a craft distiller pursuant to Section 60-6A-6.1 NMSA 1978", in Paragraph B(9), after "winegrower", added "or spiritous liquor from a craft distiller"; in Subsection D, changed each occurrence of "alcohol and gaming" to "alcoholic beverage control"; and deleted former Subsection E and redesignated former Subsection F as Subsection E.

The 2019 amendment, effective July 1, 2019, provided for private celebration small brewer's permits, included cider in the provisions of this section, provided additional requirements for the renewal of a small brewer's license, and expanded the hours for sales and tastings of beer, wine or cider; in Subsection B, added new Paragraph B(8) and redesignated former Paragraphs B(8) through B(11) as Paragraphs B(9) through B(12), respectively; added new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively; in Subsection D, after "At public", added "or private", after "celebration permit", added "or a 'small brewer's private celebration permit'", and after "small brewers and winegrowers", deleted "As used in this subsection, 'public celebration'

includes a state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis."; in Subsection E, after "between the hours of", changed "noon" to "11:00 a.m."; and added new Subsection F.

2015 Amendments. — Laws 2015, ch. 124, § 2, effective July 1, 2015, in Subsection A, after "Domestic Winery", deleted "and", and after "Small Brewery", added "and Craft Distillery"; in Subsection B, Paragraph (2), after "bottled or produced by", deleted "him" and added "the licensee"; in Paragraph (3), after "packaged by or for", deleted "him" and added "the licensee"; in Paragraph (5), after "the licensee", deleted "or" and added "beer", and after "small brewer's premises", added "or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978"; in Paragraph (7), after the second occurrence of "small brewer", added "or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978"; added new Paragraph (8) and redesignated the succeeding paragraphs accordingly; and in Paragraph (9), added "for the purposes described in this subsection", after "at no more than", deleted "two" and added "three", after "bottled by or for the small brewer", deleted "or", and after "bottled by or for another New Mexico small brewer", added "or wine produced by a winegrower pursuant to Section 60-6A-11 NMSA 1978".

Laws 2015, ch. 102, § 5, effective July 1, 2015, in Subsection A, after "In", deleted "any", after "a person qualified", deleted "under" and added "pursuant to", after "Domestic Winery", deleted "and", and after "Small Brewery", added "and Craft Distillery"; in Subsection B, in Paragraph (1), deleted "become a manufacturer or producer of" and added "manufacture or produce"; in Paragraph (2), after "produced by", deleted "him" and added "the licensee"; in Paragraph (3), after "packaged by or for", deleted "him" and added "the licensee"; in Paragraph (8), after "no more than", deleted "two" and added "three", after "small brewer", deleted "and"; in Paragraph (9), after "ingredients", added "and"; added Paragraph (10); and in Subsection C, after "off the small brewer's premises in", deleted

"any" and added "a", and after "'public celebration' includes", deleted "any" and added "a".

The 2001 amendment, effective July 1, 2001, in Subsection B, inserted "or produced and bottled by or for another New Mexico small brewer" in Paragraph (5), inserted "or beer produced and bottled by or for another New Mexico small brewer; and" in Paragraph (8), deleted Paragraph (10), giving a licensed brewer the ability to apply for a permit to join other licensed brewers to sell beer produced at a common facility; added Subsection C and renumbered former Subsection C as D.

The 1999 amendment, effective July 1, 1999, added Subsection B(10).

The 1998 amendment, effective March 10, 1998, deleted "and" at the end of Paragraph B(6) and added Paragraphs B(8) and (9).

The 1997 amendment, effective April 11, 1997, deleted "do any of the following" at the end of the introductory paragraph of Subsection B, added Paragraphs B(7) through B(9), added Subsection C, and made minor stylistic changes.

The 1993 amendment, effective July 1, 1993, inserted "bottled" in Paragraph (2) of Subsection B.

60-6A-26.2. Beer bottler's license.

A. In any local option district, a person qualified under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], before he bottles beer for a person holding a small brewer's license, shall procure from the department a beer bottler's license.

B. A beer bottler's license authorizes the person to whom it has been issued to do the following:

- (1) bottle beer for the holder of a small brewer's license;
- (2) hold or store beer in bulk that was produced by a small brewer until it is bottled; and
- (3) hold or store beer that he has bottled on his premises.

C. A beer bottler's license shall not authorize the person to whom it has been issued to sell, serve, deliver or allow consumption of beer in unopened packages or by the drink at wholesale or retail on his licensed premises.

History: Laws 1993, ch. 68, § 10.

60-6A-27. License fees.

Every application for the issuance or annual renewal of the following licenses and permits shall be accompanied by a license fee or permit fee in the following specified amounts:

- A. brandy manufacturer's license, seven hundred fifty dollars (\$750);
- B. small brewer's license, seven hundred fifty dollars (\$750);
- C. wine blender's license, seven hundred fifty dollars (\$750);
- D. wine exporter's license, five hundred dollars (\$500);
- E. small brewer's public celebrations permit, ten dollars (\$10.00) for each public celebration;
- F. small brewer's off-premises permit, two hundred dollars (\$200) for each off-premises location;
- G. craft distiller's license, seven hundred fifty dollars (\$750); and
- H. craft distiller's off-premises permit, two hundred dollars (\$200) for each off-premises location.

History: 1978 Comp., § 60-6A-27, enacted by Laws 1983, ch. 280, § 8; 1985, ch. 217, § 6; 1997, ch. 229, § 2; 1998, ch. 109, § 5; 1998, ch. 111, § 2; 2011, ch. 110, § 4.

The 2011 amendment, effective July 1, 2011, added a craft distiller's license fee and a craft distiller's off-premises license fee.

Temporary provisions. — Laws 2011, ch. 110, § 5 provided that:

A. If a person has submitted an application for a manufacturer's license as a distiller to the director of the alcohol and gaming division of the regulation and licensing department and, on July 1, 2011, the application has not yet been approved, the person may submit a request in writing to the director no later than July 31, 2011 to convert the application from a manufacturer's license as a distiller to an application for a craft distiller's license in accordance with procedures adopted by the director.

B. If, within one hundred twenty days prior to or subsequent to July 1, 2011, a person obtains approval for a manufacturer's license as a distiller, the person may

submit a request in writing to the director of the alcohol and gaming division of the regulation and licensing department to convert the manufacturer's license as a distiller to a craft distiller's license pursuant to procedures adopted by the director and upon payment of licensing fees as provided in Section 60-6A-27 NMSA 1978. There shall be no refunds of application or licensing fees unless otherwise provided by law.

The 1998 amendments. — Laws 1998, ch. 109, § 5, deleted former Subsections C, F and G, and redesignated former Subsections D, E and H as Subsections C, D and E, effective July 1, 1998. However, Laws 1998, ch. 111, § 2, also amending this section by making minor stylistic changes and adding Subsection I, but not giving effect to the changes made by the first 1998 amendment, was approved March 10, 1998. This section is set out as amended by Laws 1998, ch. 111, § 2. See 12-1-8 NMSA 1978.

The 1997 amendment, effective April 11, 1997, added Subsections H and I, and made minor stylistic changes.

60-6A-28. Nonresident licenses.

Notwithstanding the provisions of Sections 60-6B-1 and 60-6B-2 NMSA 1978, a person not a citizen of the United States may apply for and be granted, subject to other qualifications required by the Liquor Control Act [60-3A-1 NMSA 1978], any license established by the provisions of the Domestic Winery and Small Brewery Act [60-6A-21 to 60-6A-28 NMSA 1978]; provided that the director of the department of alcoholic beverage control, in qualifying such licensees, may investigate the applicant's background by contacting the appropriate state or foreign governmental agencies, including police and international police organizations, and may require the furnishing of such documentation as necessary to determine the applicant's qualifications under the Liquor Control Act.

History: 1978 Comp., § 60-6A-28, enacted by Laws 1983, ch. 280, § 9; 1985, ch. 217, § 7.

Cross references. — For definition of "director," see 60-3A-3G NMSA 1978.

60-6A-29. Wine wholesaler's license.

A. In any local option district, a winegrower licensed under the Liquor Control Act [60-3A-1 NMSA 1978] may apply for and be issued a license as a wine wholesaler of wines produced by or for New Mexico winegrowers.

B. No wine wholesaler shall sell, offer for sale or ship wine not received at and shipped from the premises specified in the wine wholesaler's license.

C. No wine wholesaler shall sell or offer for sale wine to any person other than the holder of a New Mexico wine wholesaler's, wholesaler's, retailer's, dispenser's, canopy, restaurant or club license or a governmental licensee or its lessee.

D. Nothing contained in this section shall prevent the sale, transportation or shipment of wine by a wine wholesaler to any person outside the state when shipped under permit from the department.

History: Laws 1988, ch. 60, § 1; 1998, ch. 109, § 6.

The 1998 amendment, effective July 1, 1998, in Subsection A, deleted "or winer" preceding "a winegrower"

near the beginning and inserted "or for" near the end, and deleted "or winers" preceding "New Mexico winegrowers".

60-6A-30. Posting of warnings.

Any licensee holding a license pursuant to Sections 60-6A-2 through 60-6A-5 NMSA 1978 or Section 60-6B-16 NMSA 1978 shall post in a conspicuous place a sign in both English and Spanish that reads as follows:

"Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."

The director shall prescribe the form of such warning and shall make warning signs available to all such license holders.

History: Laws 1991, ch. 68, § 1.

60-6A-31. State fair; golf courses; ski areas; alcoholic beverage sales restrictions.

Sales, service, delivery or consumption of alcoholic beverages shall be permitted on the grounds of the state fair, on the grounds of golf courses, on the grounds of ski areas and on the grounds and in the vineyards of a winery only on the licensed premises in controlled access areas of the state fair, golf courses, ski areas and wineries, the designation of which has been negotiated as part of the license application or renewal process.

History: Laws 1993, ch. 68, § 37; 1999, ch. 64, § 2; 2009, ch. 139, § 2; 2016, ch. 76, § 2.

Cross references. — For service of alcohol at state fair, see 16-6-4 NMSA 1978.

The 2016 amendment, effective May 18, 2016, allowed the sale, service, delivery or consumption of alcoholic beverages on the grounds of ski areas; in the catchline, after "golf courses", added "ski areas"; after the first occurrence of "golf courses", added "on the grounds of ski areas", and after the second occurrence of "golf courses", added "ski areas".

The 2009 amendment, effective June 19, 2009, after the first occurrence of "golf courses", added "and on the grounds and in the vineyards of a winery", and after the second occurrence added "and wineries".

The 1999 amendment, effective July 1, 1999, inserted "golf courses" in the section heading, inserted "and on the grounds of golf courses", and inserted "of the state fair and golf courses".

60-6A-32. Interstate wine tastings; competitions; permits.

A. Exempt from the procurement of any other license or permit issued pursuant to the terms of the Liquor Control Act [60-3A-1 NMSA 1978], but not exempt from the procurement of a competition permit, is a winemaker or winery licensed outside of New Mexico that desires to participate in a regional wine, cider, beer or spirituous liquor tasting or competition within New Mexico. One permit shall be issued by the director to an out-of-state winemaker or winery for the duration of the wine tasting or competition.

B. A person issued a competition permit pursuant to this section may do any of the following:

- (1) bring no more than twenty-five cases of wine into New Mexico after indicating on the permit application the number of cases to be brought into the state;
- (2) participate in the regional competition and wine tastings associated with the competition for which the competition permit is issued;
- (3) participate in the regional wine tasting for which the competition permit is issued; and
- (4) at a wine tasting for which the person is issued the permit, conduct tasting of wine and sell by the glass or bottle or in unbroken packages for consumption off the wine-tasting premises but not for resale, wine brought into the state by the person for the wine tasting or competition.

C. Every application for the issuance of a competition permit shall be on a form prescribed by the director and accompanied by a permit fee of twenty-five dollars (\$25.00).

D. As used in this section:

- (1) "competition" means an event at which a jury of wine tasters compares the quality of the wines entered for judging and at which prizes are offered for the wines judged to be of the best quality;
- (2) "regional competition" means a competition at which the wines to be judged are from more than one state or country;
- (3) "regional wine tasting" means a wine tasting at which the wines offered for tasting are from more than one state or country;
- (4) "winemaker" means a person who manufactures or produces wine;
- (5) "winery" means an establishment at which wine is manufactured or produced and that is licensed for that purpose by the state or country in which it is located; and
- (6) "wine tasting" means an event at which wines are offered for tasting but not necessarily for sale and not for comparison for the purpose of awarding prizes to the wines of the best quality.

History: Laws 1998, ch. 109, § 7; 2021, ch. 7, § 15.

The 2021 amendment, effective July 1, 2021, allowed out-of-state wineries to participate in beer, cider,

or spiritous liquor tastings or competitions within New Mexico; and in Subsection A, after "regional wine", added "cider, beer or spiritous liquor".

60-6A-33. Tasting permit; fees.

A. The director is authorized to issue a tasting permit to a licensed dispenser, retailer, resident manufacturer, nonresident manufacturer, wholesaler or winegrower or an agent of any such licensed entity to conduct tastings of wine, beer, cider or spirituous liquor on a licensed premises in accordance with rules promulgated by the director to protect public health and safety. A person serving wine, beer, cider or spirituous liquor at a tasting event permitted pursuant to this section shall have a server permit.

B. To apply for a tasting permit, the holder of a license described in Subsection A of this section shall submit to the department a tasting permit fee of one hundred dollars (\$100) and such information as the director may require. A tasting permit shall be valid for one year from the date that it is issued and may be renewed upon application to the department and payment of the tasting permit fee of one hundred dollars (\$100). A person permitted to hold tastings pursuant to this section shall notify the director no less than forty-eight hours before a tasting event of the person's intent to hold the event. Notification shall include the times and locations of, and the types of products to be included in, the tasting event. Upon receipt of notification, the director shall forward the notice to the appropriate staff member of the special investigations division [New Mexico state police division] of the department of public safety.

C. The director may impose the following administrative penalties on a person who holds a tasting permit for violations of the Liquor Control Act that occur during tastings conducted pursuant to the person's tasting permit:

(1) for a first violation, a fine no greater than one thousand dollars (\$1,000) or a restriction on issuance of tasting permits to the person for a period of two months, or both;

(2) for a second violation within a year of the first violation, a fine no greater than two thousand dollars (\$2,000) or a restriction on issuance of tasting permits to the person for a period of six months, or both; and

(3) for a third violation within a year of the first violation, a citation against the license held by the person, a fine no greater than five thousand dollars (\$5,000) and a restriction on issuance of tasting permits to the person for a period of one year.

History: Laws 2013, ch. 148, § 1; 2015, ch. 77, § 1.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2015, ch. 3, § 43 provided that all references in law to the special investigations division of the department of public safety shall be deemed to refer to the New Mexico state police division of the department of public safety

The 2015 amendment, effective July 1, 2015, provided for administrative penalties for violations of the Liquor Control Act by persons who hold tasting permits; and added Subsection C.

60-6A-34. Special bed and breakfast dispensing license; fees; limitations.

A. The director is authorized to issue a special bed and breakfast dispensing license to an owner or operator of a bed and breakfast in accordance with rules promulgated by the director to protect public health and safety. The license shall be limited to the serving of wine and beer in conjunction with food to the guests of the bed and breakfast.

B. A bed and breakfast establishment may apply for a special bed and breakfast dispensing license by submitting to the department a fee of one hundred dollars (\$100) and such information as the director may require. A license shall be valid for one year from the date that it is issued and may be renewed for a fee of one hundred dollars (\$100). The license shall allow the owner, operator or employee of a bed and breakfast who holds a server permit to dispense only wine or beer only to guests of the bed and breakfast in conjunction with the serving of food in a common area of the bed and breakfast.

C. The issuance of a bed and breakfast license for beer and wine service shall be contingent on the approval of the local public governing body or local option district of the jurisdiction in which the business is domiciled.

D. Service of beer or wine with food to guests at a bed and breakfast shall be limited to two twelve-ounce servings of beer or two six-ounce servings of wine per guest.

E. A special bed and breakfast dispensing license shall not be transferable from person to person or from one location to another.

F. An owner, operator or employee of a bed and breakfast who holds a server permit shall comply with the provisions of the Alcohol Server Education Article of the Liquor Control Act [Chapter 60, Article 6E NMSA 1978].

G. For the purposes of this section, "bed and breakfast" means a business establishment that offers temporary lodging with meals included and has a guest capacity of twenty or fewer persons.

History: Laws 2013, ch. 150, § 1 and Laws 2013, ch. 159, § 1. — Laws 2013, ch. 150, § 1 and Laws 2013, ch. 159, § 1 enacted identical new sections, both effective July 1, 2013. The section was set out as enacted by Laws 2013, ch. 159, § 1. See 12-1-8 NMSA 1978.

60-6A-35. Small brewer and winegrower limited wholesaler's license.

In any local option district, a small brewer or a winegrower that is licensed pursuant to the Domestic Winery, Small Brewery and Craft Distillery Act and that also holds a restaurant license or a dispenser's license may apply for and be issued a small brewer and winegrower limited wholesaler's license. A small brewer that holds a small brewer and winegrower limited wholesaler's license shall only sell, offer for sale or ship beer manufactured by the small brewer. A winegrower that holds a small brewer and winegrower limited wholesaler's license shall only sell, offer for sale or ship wine manufactured by the winegrower.

History: Laws 2015, ch. 113, § 2.

Effective dates. — Laws 2015, ch. 113, § 3 made Laws 2015, ch. 113, § 2 effective July 1, 2015.

60-6A-36. Redeemable coupons prohibited.

A. A nonretail licensee shall not offer, fund, produce, sponsor, promote, furnish or redeem any type of coupon or scanback.

B. For purposes of this section:

(1) "coupon" means an instantly redeemable coupon issued to a retailer by a manufacturer, importer or wholesaler allowing a specified amount of money to be deducted from the normal price of the particular alcoholic malt beverage product purchased at retail by a consumer during a promotional period;

(2) "licensee" means a person issued a license pursuant to the Liquor Control Act;

(3) "nonretail licensee" means a manufacturer, importer or wholesaler licensee; and

(4) "scanback" means a reimbursement payment made to a retailer by a manufacturer, importer or wholesaler based on how many units of the particular alcoholic malt beverage products were sold during a promotional period.

History: Laws 2018, ch. 45, § 1.

Effective date. — Laws 2018, ch. 45, § 2, made Laws 2018, ch. 45, § 1 effective July 1, 2018.

60-6A-37. Alcoholic beverage delivery permit; third party delivery license.

A. A person otherwise qualified pursuant to the provisions of the Liquor Control Act may apply for and the department may issue an alcoholic beverage delivery permit authorizing the person to deliver alcoholic beverages if the applicant holds a valid retailer's, dispenser's, craft distiller's, winegrower's, small brewer's or restaurant license; provided, however, that if the licensed premises has indoor retail space greater than ten thousand square feet in size and is located within a class A county, the department may issue an alcoholic beverage delivery permit if:

(1) the license holder uses an identification verification system that meets the department's requirements to establish that the identification of the purchaser was checked, scanned and stored for each delivery transaction;

(2) no spirituous liquors are included in deliveries of alcoholic beverages;

(3) the liquor liability endorsement required pursuant to Paragraph (2) of Subsection H of this section is in an amount of not less than five million dollars (\$5,000,000); and

(4) deliveries of alcoholic beverages are not made using a third-party alcohol delivery service pursuant to Subsection G of this section.

B. An alcoholic beverage delivery permit issued to a valid restaurant licensee shall only convey the authority to deliver alcoholic beverages concurrently with the delivery of a minimum of ten dollars (\$10.00) worth of food; provided that under no circumstances shall the delivery of alcoholic beverages be more than seven hundred fifty milliliters of wine, six twelve-ounce containers of pre-packaged wine, beer, cider or spirituous liquors or one locally produced growler.

C. An alcoholic beverage delivery permit is not transferable from person to person or from one location to another.

D. An alcoholic beverage delivery permit issued pursuant to this section is valid for one year from the date of issuance. An alcoholic beverage delivery permittee may renew an alcoholic beverage delivery permit annually as required by the department.

E. The director shall promulgate rules to implement the provisions of this section, which shall include the following requirements and restrictions:

(1) an alcoholic beverage delivery permittee shall deliver alcoholic beverages only in unbroken packages or growlers;

(2) payment for alcoholic beverages shall be received only at the licensed premises of the selling licensee personally or by other means, including telephonically, electronically, via website, application or internet platform;

(3) a licensee shall not change the price charged for an alcoholic beverage because that beverage is purchased for delivery; provided that a separate fee may be charged for delivery; and further provided that the fee shall be disclosed to the customer at the time of the purchase;

(4) deliveries of alcoholic beverages shall occur only during the hours the selling licensee is authorized to sell alcoholic beverages;

(5) an alcoholic beverage delivery permittee shall not deliver an alcoholic beverage to a business, a commercial establishment, a college or university campus or a school campus that is not a home school;

(6) an alcoholic beverage delivery permittee delivering alcoholic beverages shall obtain valid proof of the recipient's identity and age;

(7) deliveries of alcoholic beverages shall not be made to an intoxicated person in violation of Section 60-7A-16 NMSA 1978 or to a minor in violation of Section 60-7B-1 NMSA 1978;

(8) while delivering alcoholic beverages, an alcoholic beverage delivery permittee shall have in the permittee's possession only alcoholic beverages that have been purchased for delivery; and

(9) while delivering alcoholic beverages, an alcoholic beverage delivery permittee shall have in the permittee's possession the original or an electronic or physical copy of the permittee's alcoholic beverage delivery permit.

F. A licensee that holds an alcoholic beverage delivery permit issued pursuant to this section may utilize an employee who is at least twenty-one years of age and who holds a valid server permit to deliver alcoholic beverages.

G. A licensee that holds an alcoholic beverage delivery permit issued pursuant to this section may contract with a third-party alcohol delivery service licensed by the department; provided that the licensee, the third-party alcohol delivery service and the server who delivers alcohol may be separately liable for violations of the Liquor Control Act, including for the delivery of alcohol to an intoxicated person or to a minor.

H. The department, by rule, shall create a third-party alcohol delivery permit and, at a minimum, condition the issuance of a third-party alcohol delivery permit on:

(1) requiring that all delivery employees or independent contractors of the third-party alcohol delivery service hold a valid New Mexico alcohol server permit; and

(2) requiring proof of general liability insurance coverage with a liquor liability endorsement in an amount not less than one million dollars (\$1,000,000) per occurrence, which

endorsement shall provide coverage for employees or independent contractors of the third-party alcohol delivery service.

I. A person, company or licensee that wishes to deliver retail sales of alcohol in New Mexico on behalf of valid retailer's, dispenser's, craft distiller's, winegrower's, small brewer's or restaurant licensees that also hold a valid alcoholic beverage delivery permit shall obtain a third-party alcohol delivery license from the department.

J. An applicant for a third-party alcohol delivery license is required to be authorized to do business in this state, may not share in the profits of the sale of alcohol with a licensee and may only charge a delivery fee that is disclosed to the buyer at the time of sale.

K. A third-party alcohol delivery licensee shall not have the ability to buy, hold or deliver alcohol under its own license but to only allow for delivery of alcohol from a licensed premises and from a qualified licensee with a valid alcoholic beverage delivery permit to the buyer.

L. A third-party alcohol delivery licensee shall be independently liable for the delivery of alcoholic beverages to an intoxicated person or to a minor or for any violation of the Liquor Control Act and be subject to suspension, revocation or administrative fine pursuant to Sections 60-6C-1 through 60-6C-6 NMSA 1978.

M. A third-party alcohol delivery license shall be valid for one year, and may be renewed.

History: Laws 2021, ch. 7, § 4.

Effective dates. — Laws 2021, ch. 7, § 37 made Laws 2021, ch. 7, § 4 effective July 1, 2021.

60-6A-38. Study effects of delivery of alcohol.

Five years after the enactment of the law, the department of health shall conduct a study of impacts of the delivery of alcohol, evaluating consumption trends and public safety impacts of the delivery of alcohol.

History: Laws 2021, ch. 7, § 35.

Effective dates. — Laws 2021, ch. 7, § 37 made Laws 2021, ch. 7, § 35 effective July 1, 2021.

ARTICLE 6B

License Provisions

Sec.		Sec.	
60-6B-1.	Persons prohibited from receiving or holding licenses.	60-6B-11.	Repealed.
60-6B-1.1.	Repealed.	60-6B-12.	Inter-local option district and inter-county transfers.
60-6B-2.	Applications.	60-6B-13.	Repealed.
60-6B-3.	Wholesaler's lien.	60-6B-14.	Canopy license definition.
60-6B-4.	Issuance or transfer of license; approval of appropriate governing body.	60-6B-15.	Repealed.
60-6B-5.	Expiration and renewal of licenses.	60-6B-16.	Special provisions for replacement of canopy licenses; transfer tax.
60-6B-6.	Corporate licensees; limited partnership licensees; reporting.	60-6B-17, 60-6B-18.	Repealed.
60-6B-7.	Cancellation of license for failure to engage in business.	60-6B-19.	Retailers and dispensers; segregated sales; table wines excepted.
60-6B-8.	Repealed.	60-6B-20.	Licensed production facilities; alternating proprietorship.
60-6B-9.	Discontinuance of business or death of licensee; judicial sales.	60-6B-21.	Licensed retailer cooperatives.
60-6B-10.	Locations near church or school; restrictions on licensing.		

60-6B-1. Persons prohibited from receiving or holding licenses.

The following classes of persons shall be prohibited from receiving or holding licenses under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978]:

A. a person who has been convicted of two separate misdemeanor or petty misdemeanor violations of the Liquor Control Act in any calendar year or of any felony, unless the person is restored to

the privilege of receiving and holding licenses by the governor or unless the director determines that the person merits the public trust, in which case the person shall receive licenses under reasonable terms and conditions fixed by the director, which shall include that the person pay an administrative penalty of two thousand five hundred dollars (\$2,500) for each license held by that person;

B. a person whose spouse had been convicted of a felony unless the person demonstrates that the convicted spouse will have no involvement in the operation of the license;

C. a minor; or

D. a corporation that is not duly qualified to do business in New Mexico, unless the licensee holds a public service license or a nonresident license issued under Section 60-6A-7 NMSA 1978; provided, however, that a corporation that owns stock in a corporation that owns a New Mexico liquor license does not need to be qualified to do business in New Mexico regardless of the size of the ownership interest.

History: Laws 1981, ch. 39, § 37; 1987, ch. 198, § 1; 1989, ch. 292, § 1; 1991, ch. 119, § 6; 1993, ch. 329, § 3.

The 1993 amendment, effective June 18, 1993, added present Subsection B; redesignated former Subsections B and C as present Subsections C and D; and made stylistic changes in Subsection D.

The 1991 amendment, effective June 14, 1991, inserted "or petty misdemeanor" in Subsection A.

ANNOTATIONS

Persons convicted of felonies. — A bar and liquor license had been held in trust by a father for his son, a convicted felon. Upon the son's death, the doctrine of unclean hands did not preclude judgment in favor of the son's heirs, who sued to enforce the trust. *Granado v. Granado*, 1988-NMSC-069, 107 N.M. 456, 760 P.2d 148.

The director of the department of alcoholic beverage control (now alcohol and gaming division) has the duty, authority and power to revoke or cancel a liquor license owned by a person who is convicted of a felony. 1987 Op. Att'y Gen. No. 87-02.

Two misdemeanors in same year preclude license renewal. — Two personal misdemeanor violations of the liquor act within one calendar year are requisite before prohibition on receiving a renewal license becomes applicable. 1945-46 Op. Att'y Gen. No. 45-4680.

Conviction, subsequent arrest on another charge, insufficient for section's prohibition. — Two convictions, and not merely one conviction and a subsequent arrest on another charge, must occur in the same calendar year in order for the prohibition of this section to become operative. 1965 Op. Att'y Gen. No. 65-215.

One-year sentence imposed by court-martial not felony. — Imposition of a sentence of more than one year by a duly appointed court-martial is not to be considered a felony per se as contemplated by the language of this section. 1957-58 Op. Att'y Gen. No. 58-06.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 157 to 162.

48 C.J.S. Intoxicating Liquors § 135.

60-6B-1.1. Repealed.

Repeals. — Laws 2021, ch. 7, § 36 repealed 60-6B-1.1 NMSA 1978, as enacted by Laws 1989, ch. 292, § 2, relating to licenses held by noncitizens, effective July 1, 2021.

For provisions of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

60-6B-2. Applications.

A. Before a new license authorized by the Liquor Control Act [60-3A-1 NMSA 1978] may be issued by the director, the applicant for the license shall:

(1) submit to the director a written application for the license under oath, in the form prescribed by and stating the information required by the director, together with a nonrefundable application fee of two hundred dollars (\$200);

(2) submit to the director for approval a description, including floor plans, in a form prescribed by the director, that shows the proposed licensed premises for which the license application is submitted. The area represented by the approved description shall become the licensed premises;

(3) submit the name and street address of a New Mexico resident who is not a felon, who has power of attorney and authority to bind the applicant to matters related to liquor sales and operations and upon whom the director may serve any notice related to ownership or operation of the license, including any notice of charge pursuant to Chapter 60, Article 6C NMSA 1978;

(4) if the applicant is a corporation, be required to submit as part of its application the following:

(a) a certified copy of its articles of incorporation or, if a foreign corporation, a certified copy of its certificate of authority;

(b) the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation and the amounts of stock held by each stockholder; provided, however, a corporation may not be licensed if an officer, manager, director or holder of more than a ten percent interest in the applicant entity would not be eligible to hold a license pursuant to the Liquor Control Act; and

(c) such additional information regarding the corporation as the director may require to assure full disclosure of the corporation's structure and financial responsibility;

(5) if the applicant is a limited partnership, submit as part of its application the following:

(a) a certified copy of its certificate of limited partnership;

(b) the names and addresses of all general partners and of all limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other income paid by the limited partnership. A limited partnership shall not receive a license if a partner or holder of a ten percent or greater interest in the applicant entity designated in this subsection would not be eligible to hold a license issued pursuant to the Liquor Control Act; and

(c) such additional information regarding the limited partnership as the director may require to assure full disclosure of the limited partnership's structure and financial responsibility;

(6) if the applicant is a limited liability company, submit as part of its application the following:

(a) a copy of the articles of organization, with a copy of the certificate of filing with the public regulation commission;

(b) the name and addresses of all the managing members and all of the nonmanaging members that own a greater than ten percent interest in the limited liability company. Any direct or indirect parent entity of the limited liability company with an interest of ten percent or more in the applicant entity shall submit application forms and qualify to hold a license; and

(c) such additional information regarding the limited liability company as the director may require to assure full disclosure of the limited liability company's structure and financial responsibility;

(7) if the applicant is a trust, submit as part of its application:

(a) the names and addresses of the trustees;

(b) the names and addresses of any beneficiaries having control over the property of the trust or receiving regular and substantial distributions of principal and income from the trust. Any beneficiary receiving regular and substantial distributions from the trust shall qualify to hold a license. The director may request a copy of the trust agreement for review, which trust agreement need not become part of the application. Affidavits as to the operation and distribution of the principal and income may be requested in lieu of, or in addition to, the copy of the trust agreement that is supplied for review by the department; and

(c) such additional information regarding the trust as the director may require to assure full disclosure of the trust's structure and financial responsibility; and

(8) obtain approval for the issuance from the governing body of the local option district in which the proposed licensed premises are to be located in accordance with the provisions of the Liquor Control Act.

B. Except for individual officers, directors, shareholders, members or partners of entities that are publicly traded on a national stock exchange and for individuals who have been fingerprinted for another New Mexico license and had no prior criminal or arrest record, every applicant for a new license or for a transfer of ownership of a license shall file with the application two complete sets of fingerprints taken under the supervision of and certified to by an officer of the New Mexico state police, a county sheriff, a municipal chief of police, a police officer in a foreign country or an individual qualified to take fingerprints by virtue of training or experience, for each of the following individuals:

(1) if the applicant is a person, for the applicant;

(2) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a corporation, for each principal officer, for each member of the board of directors and for each stockholder with a ten percent or greater interest in the applicant entity;

(3) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a general partnership, for each partner;

(4) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a limited partnership, for each general partner, for each limited partner holding a ten percent or greater interest in the applicant entity and for any principal officers of the limited partnership;

(5) if the applicant or the holder of a ten percent or greater interest in the applicant entity is a limited liability company, for each managing member, for each member who owns a ten percent or greater interest in the applicant entity and for any principal officer of the limited liability company; and

(6) if the applicant is a trust, for each trustee and for each beneficiary who has control over trust property and income or who receives substantial and regular distributions from the trust.

C. Upon submission of a sworn affidavit from each person who is required to file fingerprints stating that the person has not been convicted of a felony in any jurisdiction and pending the results of background investigations, a temporary license for ninety days may be issued. The temporary license may be extended by the director for an additional ninety days if the director determines there is not sufficient time to complete the background investigation or obtain reviews of fingerprints from appropriate agencies. A temporary license shall be surrendered immediately upon order of the director.

D. An applicant who files a false affidavit shall be denied a license. When the director determines a false affidavit has been filed, the director shall refer the matter to the attorney general or district attorney for prosecution of perjury.

E. If an applicant is not a resident of New Mexico, fingerprints may be taken under supervision and certification of comparable officers in the state of residence of the applicant.

F. Before issuing a license, the department shall hold a public hearing within thirty days after receipt of the application pursuant to Subsection K of this section.

G. An application for transfer of ownership shall be filed with the department no later than thirty days after the date a person acquired an ownership interest in a license. It shall contain the actual date of sale of the license and shall be accompanied by a sworn affidavit from the owner of record of the license agreeing to the sale of the license to the applicant as well as attesting to the accuracy of the information required by this section to be filed with the department. A license shall not be transferred unless it will be placed into operation in an actual location within one hundred twenty days of issuance of the license, unless for good cause shown the director grants an additional extension for a length of time determined by the director.

H. Whenever it appears to the director that there will be more applications for new licenses than the available number of new licenses during any time period, a random selection method for the qualification, approval and issuance of new licenses shall be provided by the director. The random selection method shall allow each applicant an equal opportunity to obtain an available license, provided that all dispenser's and retailer's licenses issued in a calendar year shall be issued to residents of the state. For the purposes of random selection, the director shall also set a reasonable deadline by which applications for the available licenses shall be filed. A person shall not file more than one application for each available license and no more than three applications per calendar year.

I. After the deadline set in accordance with Subsection H of this section, no more than ten applications per available license shall be selected at random for priority of qualification and approval. Within thirty days after the random selection for the ten priority positions for each license, a hearing pursuant to Subsection K of this section shall be held to determine the qualifications of the applicant having the highest priority for each available license. If necessary, such a hearing shall be held on each selected application by priority until a qualified applicant for each available license is approved. Further random selections for priority positions shall also be held pursuant to this section as necessary.

J. All applications submitted for a license shall expire upon the director's final approval of a qualified applicant for that available license.

K. The director shall notify the applicant by certified mail of the date, time and place of the hearing. The hearing shall be held in Santa Fe. The director may designate a hearing officer to

take evidence at the hearing. The director or the hearing officer shall have the power to administer oaths.

L. In determining whether a license shall be issued, the director shall take into consideration all requirements of the Liquor Control Act. In the issuance of a license, the director shall specifically consider the nature and number of prior violations of the Liquor Control Act by the applicant or of any citations issued within the prior five years against a license held by the applicant or in which the applicant had an ownership interest required to be disclosed under the Liquor Control Act. The director shall disapprove the issuance or give preliminary approval of the issuance of the license based upon a review of all documentation submitted and any investigation deemed necessary by the director.

M. Before a new license is issued for a location, the director shall cause a notice of the application for the license to be posted conspicuously, on a sign not smaller than thirty inches by forty inches, on the outside of the front wall or front entrance of the immediate premises for which the license is sought or, if no building or improvements exist on the premises, the notice shall be posted at the front entrance of the immediate premises for which the license is sought, on a billboard not smaller than five feet by five feet. The contents of the notice shall be in the form prescribed by the department, and such posting shall be over a continuous period of twenty days prior to preliminary approval of the license. The director shall prescribe the manner in which the posting may be accomplished by the licensee, the licensee's representative or the director's designee.

N. A license shall not be issued until the posting requirements of Subsection M of this section have been met.

O. All costs of publication and posting shall be paid by the applicant.

P. It is unlawful for a person to remove or deface a notice posted in accordance with this section. A person convicted of a violation of this subsection shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment in the county jail for not more than one hundred twenty days or by both.

Q. A person aggrieved by a decision made by the director as to the approval or disapproval of the issuance of a license may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. If the disapproval is based upon local option district disapproval pursuant to Subsection H of Section 60-6B-4 NMSA 1978, the local option district shall be a necessary party to an appeal. The decision of the director shall continue in force, pending a reversal or modification by the district court, unless otherwise ordered by the court.

History: Laws 1981, ch. 39, § 38; 1983, ch. 6, § 1; 1989, ch. 118, § 1; 1993, ch. 329, § 4; 1998, ch. 55, § 1; 1998, ch. 93, § 1; 1999, ch. 265, § 74; 2003, ch. 246, § 2; 2007, ch. 220, § 1.

Cross references. — For definitions of "department" and "director," see 60-3A-3 NMSA 1978.

For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

The 2007 amendment, effective June 15, 2007, added Paragraph (3) of Subsection A; eliminated the exception that corporations whose stock is listed on a national securities exchange do not have to provide the names and addresses of officers and directors and stockholders; eliminated from Paragraph (3) of Subsection A the requirement that a corporation state the name of its resident agent and the requirement that a power of attorney authorize the resident agent to conduct the corporation's business in New Mexico; adds Paragraphs (6) and (7) of Subsection A; excepted certain persons from the requirement to submit fingerprints; and added Paragraphs (1) through (6) of Subsection B.

The 2003 amendment, effective July 1, 2003, substituted "two hundred dollars (\$200)" for "one hundred fifty dollars (\$150)" in Paragraph A(1).

The 1999 amendment, effective July 1, 1999, in Subsection Q, substituted "pursuant to the provisions of Section 39-3-1.1 NMSA 1978" for "pursuant to the provisions of Section 12-8A-1 NMSA 1978."

1998 amendments. — Laws 1998, ch. 55, § 71, amending Subsection Q to provide for appeals pursuant to Section 12-8A-1 (compiled as Section 39-3-1.1 NMSA 1978), was approved March 9, 1998. However, Laws 1998, ch. 93, § 1, amending Subsection G by deleting "documentation of the actual purchase price paid for the license" following "shall contain" near the beginning of the second sentence and revising the last sentence to permit the director to grant extensions for a period of time determined by the director, was approved March 10, 1998. The section is set out as amended by Laws 1998, ch. 93, § 1. See 12-1-8 NMSA 1978.

The 1993 amendment, effective June 18, 1993, substituted "shall" for "must" in Subparagraph (c) of Paragraph (3) of Subsection A; deleted the former last sentence of Subsection B, which read: "Licenses may be issued by the department pending the results of any investigation based on the fingerprints submitted"; added present Subsections C, D, and G, redesignating former Subsections C through M accordingly and making related reference changes in Subsections I and O; rewrote the last sentence of Subsection M; deleted "retailer's or dispenser's" before "license" and "where alcoholic beverages are not then being sold" after "location" near the beginning of Subsection N; deleted "the hearing for the" after "prior to" near the end of Subsection N; and added the present second sentence of Subsection R.

ANNOTATIONS

Section applies to transfer of license. — Although this section and Section 60-6B-10 NMSA 1978 refer only to

a license "issued", the sections apply equally to the transfer of a license; therefore, the decision by the director of the alcohol and gaming division of the department of regulation and licensing granting an application for transfer of a liquor license was reviewable by way of the statutory appeal provided in Subsection M (now Q) of this section. *Regents of Univ. of N.M. v. Hughes*, 1992-NMSC-049, 114 N.M. 304, 838 P.2d 458.

Posting requirements must be satisfied before license issued. — This section clearly shows that there is no authority on the part of the chief of liquor control (now director of division of alcohol and gaming) to issue any license until the provisions in the statute with reference to posting are fulfilled. *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792.

Posting conspicuous notice mandatory. — This section specifies how and where the notice of application shall be posted. It is precise and clear. This statute is mandatory. *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792.

"Conspicuous" defined. — The word "conspicuous" means: "Obvious to the eye or mind; plainly visible, manifest, attracting or tending to attract attention, as by reason of size, brilliance, contrast or station." *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792.

Meaning of "such posting". — The language "such posting" in the last sentence of former Subsection C (now Subsection M) means that it must be conspicuous and it must be on the front entrance of the immediate premises. *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792.

When notice not posted "conspicuously". — A notice was not posted conspicuously where it was posted back on unimproved property at a distance sufficient so that it could not be read by anyone at the edge of the highway and at the fence at the front of the premises but could be read only by those who took the trouble to climb over, or crawl through and go back to the post to read the notice thereon placed. *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792.

Purpose of posting requirement. — The purpose behind the requirement that there be a posting of the liquor license application is to give notice to any interested person who may wish to protest it. *Yarbrough v. Montoya*, 1950-NMSC-006, 54 N.M. 91, 214 P.2d 769.

Protests acceptable in either oral or written form. — As no provision is made for a hearing of the protest of individuals, it seems that this section concerning posting of notice contemplates protests may be in writing or oral. *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792; *Yarbrough v. Montoya*, 1950-NMSC-006, 54 N.M. 91, 214 P.2d 769.

Right of appeal from director's decision limited. — Since a right of appeal exists only with reference to the issuance or refusal to issue of liquor licenses, and appeal does not lie from a decision of the chief of the division of liquor control (now director of alcohol and gaming division) denying application for the change of location in authorized use of the existing license. *Taggader v. Montoya*, 1949-NMSC-068, 54 N.M. 18, 212 P.2d 1049.

Generally, court cannot modify or overrule director's orders. — As long as the chief of the division of liquor control (now director of alcohol and gaming division) acts within the provisions of the law, courts cannot modify or overrule his administrative orders, or otherwise question the expediency or wisdom shown in issuing or revoking of liquor licenses. *Yarbrough v. Montoya*, 1950-NMSC-006, 54 N.M. 91, 214 P.2d 769.

District court cannot usurp administrative functions. — The district court does not have the administrative function of determining whether or not a liquor permit should be granted. The Liquor Control Act gives the court authority only to determine whether, upon the facts

and law, the action of the official in cancelling the license was based upon an error of law or was unsupported by substantial evidence or clearly arbitrary or capricious; otherwise it would be a delegation of administrative authority to the district court in violation of the constitution. *Floech v. Bureau of Revenue*, 1940-NMSC-014, 44 N.M. 194, 100 P.2d 225; *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792.

District court cannot pass upon legislative policy. — It is not for the courts to pass upon the wisdom of a legislative policy which removes from the municipality or county a segment of home rule which has long been associated with the liquor traffic. *Sprunk v. Ward*, 1947-NMSC-060, 51 N.M. 403, 186 P.2d 382.

Court's authority under section is limited to determining whether under the facts and law, the action of the chief (now director of alcohol and gaming division) was based on error of law, was not supported by substantial evidence or was patently arbitrary or capricious. *Yarbrough v. Montoya*, 1950-NMSC-006, 54 N.M. 91, 214 P.2d 769.

License renewal pending approval. — Where the liquor chief (now director of alcohol and gaming division) had suspended a liquor license, but the district court had set this order aside, the dealer was entitled to a renewal license subject to revocation or termination in case the district court's judgment should be reversed, on appeal. *State v. Romero*, 1944-NMSC-054, 49 N.M. 127, 158 P.2d 850.

Aggrieved person needs direct interest to obtain relief. — A person aggrieved must be a person having a direct interest, pecuniary or otherwise, one different from the public as a whole. *Padilla v. Franklin*, 1962-NMSC-083, 70 N.M. 243, 372 P.2d 820.

Aggrieved person must differ from interests of public. — Individual and institutional appellants who did not set forth nor show such a direct or pecuniary interest in the matter in controversy as to make them "aggrieved persons" were not entitled to relief under this section, since their interests in the public health, safety and morals of a community were no different than the interests of the public as a whole. *Runyan v. Jaramillo*, 1977-NMSC-061, 90 N.M. 629, 567 P.2d 478.

Jurisdiction of appeal from decision of district court. — The court of appeals had original appellate jurisdiction over an order of the division; however, for judicial economy and because the court of appeals requested direction as to the application of case law, the supreme court could decide the merits of the case. *City of Santa Fe v. Woodard*, 1996-NMSC-058, 122 N.M. 449, 926 P.2d 302.

Standing necessary for appeal. — Present owner of a liquor license which he claimed was within the 10-mile limit which could prevent the issuance of a new license to opposing party, had a direct pecuniary interest as distinguished from the public as a whole, and was an aggrieved person who had standing to appeal the decision of the chief of division of liquor control (now director of alcohol and gaming division). *Runyan v. Jaramillo*, 1977-NMSC-061, 90 N.M. 629, 567 P.2d 478.

One appealing solely as remonstrant lacks standing. — One who appeals solely as a remonstrant challenging the jurisdiction of the chief of division (now director of alcohol and gaming division) in regard to the issuance of licenses to other applicants has no standing under this section. *Padilla v. Franklin*, 1962-NMSC-083, 70 N.M. 243, 372 P.2d 820.

Writ of mandamus available as remedy when no right to appeal. — The fact that a city has no right to an appeal does not mean that it cannot bring an action for a writ of mandamus. *City of Santa Rosa v. Jaramillo*, 1973-NMSC-119, 85 N.M. 747, 517 P.2d 69.

When issuance of writ of mandamus erroneous. — Where a letter from the division of liquor control (now director of alcohol and gaming division) clearly shows that the application had been considered and in fact that the

application cannot be processed because the quota of one license to each 2000 people has been more than filled in Rio Arriba county, there can be no doubt this amounted to a final decision on the division's part to refuse the application. A decision is a determination arrived at after consideration, an opinion formed, or a course of action decided upon. The applicant's remedy upon being advised of the decision was by appeal to the district court of Santa Fe county as expressly provided by this section. It follows that the district court erred in entering its judgment ordering the issuance of a peremptory writ of mandamus. *Armijo v. Armijo*, 1967-NMSC-102, 77 N.M. 742, 427 P.2d 258.

60-6B-3. Wholesaler's lien.

The transfer, assignment, sale or lease of any license shall not be approved until the director is satisfied that all wholesalers who are creditors of the licensee have been paid or that satisfactory arrangements have been made between the licensee and the wholesaler for the payment of such debts. Such debts shall constitute a lien on the license, and the lien shall be deemed to have arisen on the date when the debt was originally incurred.

History: 1978 Comp., § 60-6B-3, enacted by Laws 1991, ch. 257, § 2.

Cross references. — For definition of "director," see 60-3A-3G NMSA 1978.

Repeals and reenactments. — Laws 1991, ch. 257, § 2 repeals former 60-6B-3 NMSA 1978, as amended by Laws 1984, ch. 58, § 2, relating to transfer of licenses, and enacts the above section, effective June 14, 1991. For provisions of former section, see 1987 Replacement Pamphlet.

ANNOTATIONS

General lien law not applicable. — General lien law does not apply to a claim made under this section. *D & M, Inc. v. United N.M. Bank*, 114 B.R. 274 (Bankr. D.N.M. 1990).

Notice of lien. — This section does not require that notice of the lien be recorded to effectuate the liquor wholesaler's lien. *In re What D'Ya Call It, Inc.*, 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

This section does not require notice of the lien to be filed to perfect the liquor wholesaler's lien. Automatic perfection of the wholesaler's lien occurs on the date the debt is incurred. The statute allows a wholesale liquor distributor to forego the requirement of filing a financing statement each time a credit sale is made to a retail distributor. *D & M, Inc. v. United N.M. Bank*, 114 B.R. 274 (Bankr. D.N.M. 1990).

Law reviews. — For comment on *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Resources J. 178 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 160, 183, 187, 189, 190, 192, 194, 195.

Grant or renewal of liquor license as affected by fact that applicant held such license in the past, 2 A.L.R.2d 1239.

Transfer of retail liquor license or permit from one location to another, 98 A.L.R.2d 1123.

48 C.J.S. Intoxicating Liquors §§ 116, 138, 142, 168.

Priority of lien. — A lien pursuant to this section has a superpriority status over other lienholders, including the tax lien in favor of the state, unless the latter liens were perfected under Section 7-1-38 NMSA 1978 or under applicable general law prior to the date the licensee incurred debts owed to wholesaler creditors. *In re What D'Ya Call It, Inc.*, 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

Liquor wholesalers have a superpriority lien over all lien holders, with the exception of the New Mexico taxation and revenue department, if the tax lien is perfected pursuant to Section 7-1-38 NMSA 1978. The tax lien is effective as of the date the notice is filed. *D & M, Inc. v. United N.M. Bank*, 114 B.R. 274 (Bankr. D.N.M. 1990).

Liquor wholesalers' superpriority liens created by this section were prior to a bank's perfected security interest even if there was a violation of Section 60-7A-9 NMSA 1978, governing credit extension by wholesalers. *D & M, Inc. v. United N.M. Bank*, 114 B.R. 274 (Bankr. D.N.M. 1990).

This section does not allow the wholesaler to claim priority for each subsequent sale as of the date of the first transaction. Instead, each separate credit sale creates a separate lien. All liens other than tax liens become subordinate to the wholesaler's liens regardless of the date of perfection. *D & M, Inc. v. United N.M. Bank*, 114 B.R. 274 (Bankr. D.N.M. 1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Security interests in liquor licenses, 56 A.L.R.4th 1131.

60-6B-4. Issuance or transfer of license; approval of appropriate governing body.

A. Prior to the approval of the issuance of a new license, and prior to the approval of a transfer permitted by Section 60-6B-3 or 60-6B-12 NMSA 1978, the director shall notify the governing body of the director's preliminary approval of the issuance or transfer of the license. Notice to the governing body shall be by certified mail.

B. A governing body that has received a notice of preliminary approval of the issuance or transfer of a license from the department may approve or disapprove the issuance or transfer of the license in accordance with the provisions of this section.

C. Within forty-five days after receipt of a notice of preliminary approval from the department, the governing body shall hold a public hearing on the question of whether the department should approve the proposed issuance or transfer.

D. The governing body shall give notice of the public hearing, as required by Subsection C of this section, and the notice shall:

(1) be published at least twice, with the initial notice published at least thirty days before the hearing, in a newspaper of general circulation within the territorial limits of the governing body;

(2) in addition to required print publication, be published on a local option district's web site, if the district has a web site;

(3) set forth:

(a) the date, time and place of the hearing;

(b) the name and address of the licensee;

(c) the action proposed to be taken by the department;

(d) the location of the licensee's premises; and

(e) such other information as may be required by the department; and

(4) be sent by certified mail to the applicant.

E. The governing body may designate a hearing officer to conduct the hearing. A record shall be made of the hearing.

F. The governing body may disapprove the issuance or transfer of the license if:

(1) the proposed location is within an area where the sale of alcoholic beverages is prohibited by the laws of New Mexico;

(2) the issuance or transfer would be in violation of a zoning or other ordinance of the governing body; or

(3) the issuance or transfer would be detrimental to the public health, safety or morals of the residents of the local option district.

G. Within thirty days after the public hearing, the governing body shall notify the department as to whether the governing body has approved or disapproved the proposed issuance or transfer of the license. If the governing body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the public hearing, the director may give final approval to the issuance or transfer of the license.

H. If the governing body disapproves the issuance or transfer of the license, it shall notify the department within the time required by Subsection G of this section setting forth the reasons for the disapproval. A copy of the minutes of the public hearing shall be submitted to the department by the governing body with the notice of disapproval. If the governing body disapproves of the issuance or transfer of the license, the director shall disapprove the issuance or transfer of the license.

I. If the governing body approves the issuance or transfer of the license, it shall notify the department within the time required by Subsection G of this section of its approval. If the governing body approves of the issuance or transfer of the license, the director shall approve the issuance or transfer of the license.

History: Laws 1981, ch. 39, § 40; 2015, ch. 102, § 6.

The 2015 amendment, effective July 1, 2015, changed the notice requirements for a hearing prior to the approval of the issuance of a new liquor license or of a transfer of a liquor license; in Subsection A, after "prior to the approval of", deleted "any" and added "a", after "Section", deleted "39 or 113 of the Liquor Control Act" and added "60-6B-3 or 60-6B-12 NMSA 1978", after "governing body of", deleted "his" and added "the director's"; in Subsection B, after "governing body", deleted "which" and added "that"; in the introductory sentence of Subsection D, after "D.", deleted "Notice of the public hearing required by Subsection C of this section shall be given by", and after "governing body", deleted "by" and added "shall give notice of the public hearing, as required by Subsection C of this section, and the notice shall"; in Paragraph (1) of Subsection D, after "(1)", deleted "publishing a notice of the date, time and place of the hearing at least once a week for two consecutive weeks" and added "be published at least twice, with the initial notice published at least thirty days before the hearing", and after the semicolon, deleted "The notice shall"; added Paragraph (2) of Subsection D; redesignated

the phrase "set forth:" as Paragraph (3) of Subsection D; added new Subparagraph D(3)(a) and redesignated the succeeding subparagraphs accordingly; deleted the paragraph designation from former Paragraph (2) of Subsection D and deleted "sending a notice"; designated the language from former Paragraph (2) of Subsection D as Paragraph (4) of Subsection D; in Paragraph (4) of Subsection D, after "(4)", added "be sent", and after "mail to the applicant", deleted "of the date, time and place of the public hearing".

ANNOTATIONS

Motion to intervene held timely. — Indian tribe political chapter's motion to intervene on appeal in a liquor license transfer case was timely filed, where the proposed transfer site was located within the geographical boundaries of the chapter, and the chapter wished to argue on behalf of the state's position on appeal. *Thriftway Mktg. Corp. v. State*, 1990-NMCA-115, 111 N.M. 763, 810 P.2d 349.

Formal preservation of error not required. — Because applicants at administrative hearings often are not represented by legal counsel, state statutes do not

require formal preservation of error before appeal may be taken from these decisions. *Dick v. City of Portales*, 1994-NMSC-092, 118 N.M. 541, 883 P.2d 127.

Same standard applicable to transfers and issuance of new licenses. — Once voters approve the sale of alcoholic beverages in a community and the proposed location meets zoning and ordinance requirements, denial of either the transfer of a license, or issuance of a new license, must be based on a finding of health, safety, or moral hazards at the location. *City of Santa Fe v. Woodard*, 1996-NMSC-058, 122 N.M. 449, 926 P.2d 302.

Transfer of license despite municipal disapproval. — Under the Liquor Control Act, Section 60-3A-1 NMSA 1978, the director of the alcohol and gaming division of the New Mexico regulation and licensing department may approve a transfer of a license despite municipal disapproval. The director must so act if the governing body fails to submit evidence supporting its decision or if, on its face, the governing body's decision is not based on evidence pertaining to the specific prospective transferee or location. *Southland Corp. v. Manzagol*, 1994-NMSC-099, 118 N.M. 423, 882 P.2d 14.

City's disapproval of new license not supported by evidence. — Since there was an absence of substantial evidence to support the conclusion of negative impact upon the health, safety, or morals of residents of the area, the city's disapproval of a restaurant license to sell beer and wine was properly disregarded by the director. *City of Santa Fe v. Woodard*, 1996-NMSC-058, 122 N.M. 449, 926 P.2d 302.

Day care and transfer of liquor license. — Where evidence was presented to the hearing officers showing that a day care was not an accredited institution and that its employees and owner were not licensed teachers, there was substantial evidence to support the conclusion that the day care was not a "school" for the purposes of a liquor license transfer. *Concerned Residents for Neighborhood Inc. v. Shollenbarger*, 1991-NMCA-105, 113 N.M. 667, 831 P.2d 603, *overruled on other grounds by Regents of Univ. of N.M. v. Hughes*, 1992-NMSC-049, 114 N.M. 304, 838 P.2d 458.

Discretion of director. — The word "may" as used in Subsection G invests the director with discretion as to whether to give final approval to the issuance or transfer of a license when a governing body of a county has failed to either approve or disapprove the issuance or transfer of the license within 30 days after a public hearing. *Thriftway Mktg. Corp. v. State*, 1992-NMCA-092, 114 N.M. 578, 844 P.2d 828.

Disapproval of transfer. — City council's decision to disapprove transfer of a liquor license as part of the administrative licensing process had to be supported by

substantial evidence using whole record review. *Dick v. City of Portales*, 1994-NMSC-092, 118 N.M. 541, 883 P.2d 127.

Disapproval of transfer based on moral considerations. — To support a disapproval of the transfer of ownership of a liquor license alone, any detriment to the morals of the residents of the local option district must relate to the qualifications of the transferee to hold the license. *Dick v. City of Portales*, 1994-NMSC-092, 118 N.M. 541, 883 P.2d 127.

In a proceeding regarding the transfer of a liquor license, testimony that a greater availability of alcohol would increase the possibility of accidents involving harm in the community was based upon speculation and was irrelevant; it was relevant, if at all, only to general safety concerns and was unsubstantiated with statistics based on facts relevant to the local community. Disapproval of a liquor license transfer must be based upon authentic facts related to a specific prospective licensee or location. *Town & Country Food Stores, Inc. v. Hughes*, 1994-NMSC-093, 118 N.M. 545, 883 P.2d 131.

The city commission failed to support its finding that the particular liquor license transfer would be detrimental to the safety of the residents and therefore its disapproval was invalid. *Town & Country Food Stores, Inc. v. Hughes*, 1994-NMSC-093, 118 N.M. 545, 883 P.2d 131.

Constitutionality of moral considerations. — The delegation to a municipality of the legislative authority to disapprove the transfer of a liquor license on moral as well as on safety and health grounds is within the traditional definition of the state's police power and thus constitutional. *Dick v. City of Portales*, 1993-NMCA-125, 116 N.M. 472, 863 P.2d 1093, *rev'd on other grounds*, 1994-NMSC-092, 118 N.M. 541, 883 P.2d 127.

No authority to restrict licensee's operation as condition for approval of waiver. — This section confers no express authority on local government to limit or restrict the operation of a licensee as a condition for approving the waiver of the distance requirement imposed by the predecessor of Section 60-6B-10 NMSA 1978, nor can such authority be inferred in view of the state's preemptive role in the regulation of liquor establishments. 1980 Op. Att'y Gen. No. 80-23.

Delegation of liquor law functions to local governments strictly construed. — Although there is no present question concerning the propriety of certain statutes delegating liquor law functions to local governments, such statutes must be strictly construed against any greater delegation of legislative power than clearly appears in the language used. 1980 Op. Att'y Gen. No. 80-23.

60-6B-5. Expiration and renewal of licenses.

A. All licenses provided for in the Liquor Control Act, except for nonresident licenses and common carrier registrations, shall be issued for a one-year period except for new licenses issued after the beginning of the license year. Nonresident licenses and common carrier registrations shall be issued for a three-year period.

B. The license year for dispenser, retailer and canopy licenses shall end on June 30 of each year. All dispenser, retailer and canopy licenses shall expire on June 30 unless renewed. The annual renewal application and renewal fee are due on April 1 of each year.

C. The license year for restaurant, club, wholesaler and manufacturer licenses shall end on October 31 of each year. All restaurant, club, wholesaler and manufacturer licenses shall expire on October 31 unless renewed. The annual renewal application and renewal fee are due on August 1 of each year.

D. All licenses not provided for in Subsections B and C of this section, except nonresident licenses and common carrier registrations, shall expire on February 28 of each year. The annual renewal application and renewal fee are due on December 1 of each year.

E. Nonresident licenses and common carrier registrations shall expire on June 30 every three years. The renewal application and renewal fee are due on April 1 of each third year.

F. A license shall not be issued or renewed if the applicant or licensee is delinquent in payment of any taxes administered by the taxation and revenue department.

G. The director shall also determine whether there exists any other reason why a license should not be renewed.

H. If the director determines that the license should not be renewed, the director shall enter an order requiring the licensee, after notice, to show cause why the license should be renewed, and the director shall conduct a hearing on the matter. If, after the hearing, the director finds that no reason exists why the license should not be renewed, the director shall renew the license.

I. Beginning on the effective date of this 2021 act, the director shall waive the next annual renewal fee for all licenses provided for in the Liquor Control Act.

History: Laws 1981, ch. 39, § 41; 1998, ch. 79, § 5; repealed and reenacted by Laws 2015, ch. 86, § 2; 2021, ch. 6, § 1.

Compiler's notes. — Laws 2021, ch. 6 contained an emergency clause and was approved on March 9, 2021. "The effective date of this 2021 act", referred to in Subsection I, was March 9, 2021.

Repeals and reenactments. — Laws 2015, ch. 86, § 2 repealed former 60-6B-5 NMSA 1978, and enacted a new section, effective June 19, 2015.

The 2021 amendment, effective March 9, 2021, required the director of the alcoholic beverage control division to waive the next annual renewal fee for all liquor licenses holders following the effective date of this act; and added Subsection I.

The 1998 amendment, effective May 20, 1998, inserted "except nonresident licenses and common carrier registrations", and deleted "and regulations" following "the rules" in the first sentence; inserted the second

sentence; and substituted "renewal period" for "year" at the end of the third sentence.

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License not renewed as a matter of law. — Where the licensee timely applied for a license, met all requirements for renewal of the license, the license had not been suspended or revoked, no taxes were due, and there were no outstanding citations and where the state failed to renew the license before it expired on June 30, the license was not renewed by operation of law. *Santillo v. N.M. Dept. of Public Safety*, 2007-NMCA-159, 143 N.M. 84, 173 P.3d 6, cert. denied, 2007-NMCERT-011, 143 N.M. 155, 173 P.3d 762.

License of person convicted of felony. — The director of the department of alcoholic beverage control (now alcohol and gaming division) has the duty, authority and power to revoke or cancel a liquor license owned by a person who is convicted of a felony. 1987 Op. Att'y Gen. No. 87-02.

60-6B-6. Corporate licensees; limited partnership licensees; reporting.

A. A corporation that holds a license issued under the Liquor Control Act [60-3A-1 NMSA 1978] shall notify the director within thirty days after the occurrence of any change in the officers, directors or holders of more than ten percent of the voting stock of the corporation, giving the names and addresses of the new officers, directors or stockholders. A corporate licensee shall also notify the director immediately of a change of agent by filing a new power of attorney. The director shall by regulation define what corporate changes, including but not limited to transfer of stock, merger and consolidation, constitute transfers of ownership of corporate licenses and shall, upon making such a determination, order appropriate compliance with the Liquor Control Act, provided that a transfer of ownership of a corporate license shall not be deemed to occur where ultimate ownership of the corporation does not change.

B. A limited partnership that holds a license issued under the Liquor Control Act shall notify the director within thirty days after the occurrence of any change of general partners or of limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other compensation by way of income paid by the limited partnership. The director shall by regulation define what limited partnership changes constitute transfers of ownership of limited partnership licenses and shall, upon making such determination, order appropriate compliance with the Liquor Control Act, provided that a transfer of ownership of a licensee that is a limited partnership shall not be deemed to occur where ultimate ownership of the limited partnership does not change.

C. A legal entity that is not a corporation or limited partnership and that holds a license issued under the Liquor Control Act shall notify the director within thirty days after the occurrence of any change in the trustees, partners, owners or members of more than a ten percent interest in the entity, giving the names and addresses of the new trustees, partners or owners. The director

shall by regulation define what entity changes constitute a transfer of ownership of such entity's license and shall, upon making such determination, order appropriate compliance with the Liquor Control Act, provided that a transfer of ownership of a licensee shall not be deemed to occur where there is no change in the ultimate ownership of the legal entity.

History: Laws 1981, ch. 39, § 42; 1984, ch. 58, § 3; 2007, ch. 220, § 2.

Cross references. — For definition of "director", see 60-3A-3G NMSA 1978.

The 2007 amendment, effective June 15, 2007, provided in Subsections A, B and C that a transfer of ownership of a license shall not be deemed to occur where the ownership of the corporation, limited partnership or the ultimate ownership of the legal entity does not change.

60-6B-7. Cancellation of license for failure to engage in business.

A. Any license issued under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] shall be canceled if the licensee fails to commence operation of the licensed business within one hundred twenty days after the license is issued and to continuously operate during customary hours and days of operation for that type of business; provided, however, the director may extend that period for a length of time determined by the director.

B. If after the one-hundred-twenty-day period or additional extension period specified in Subsection A of this section the licensee ceases to operate the licensed business during customary hours and days for that type of business for more than ten days, he shall notify the director in writing within five days of the cessation.

C. The director may grant temporary suspensions in the operation of the licensed business upon receipt of the notice provided in Subsection B of this section. A temporary suspension shall be for a period determined appropriate by the director.

D. The license of any person failing to comply with any provision of this section shall be canceled after notice and hearing complying with the provisions of Section 60-6C-4 NMSA 1978.

History: Laws 1981, ch. 39, § 43; 1984, ch. 58, § 4; 1998, ch. 93, § 2.

Cross references. — For definition of "director," see 60-3A-3G NMSA 1978.

The 1998 amendment, effective May 20, 1998, in Subsection A, substituted "that" for "such" and "for a length of time determined by the director" for "when construction or major renovation of a proposed licensed premises is planned by the licensee" near the end; inserted "or additional extension period" near the beginning of Subsection B; and rewrote the last sentence in Subsection C.

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Determination of facts required prior to cancellation. — Before cancelling a license pursuant to this section, the chief of division (now director of alcohol and gaming division) must determine the facts which would authorize the cancellation. *Crowe v. State ex rel. McCulloch*, 1971-NMSC-017, 82 N.M. 296, 480 P.2d 691.

License cannot be cancelled by operation of law as to do so would relieve the chief of division (now director of alcohol and gaming division) of his duties to make a determination of facts authorizing the cancellation and to effect the cancellation pursuant thereto. *Crowe v.*

State ex rel. McCulloch, 1971-NMSC-017, 82 N.M. 296, 480 P.2d 691.

When mandamus lies to compel cancellation. — Where the director has a clear and present legal duty to cancel the liquor license in question because of nonuse in compliance with this statute, he has no discretionary matters to consider, and mandamus will lie to compel action by the director. *City of Santa Rosa v. Jaramillo*, 1973-NMSC-119, 85 N.M. 747, 517 P.2d 69.

Legislative intent. — The clear wording of this section indicates that the legislature intended that, except in rare instances, liquor licensees should keep the usual hours on the usual days that bars and package stores are customarily open. 1963-64 Op. Att'y Gen. No. 63-121.

Provisions of section are mandatory. 1975 Op. Att'y Gen. No. 75-32.

Meaning of "shall". — This section is mandatory and the word "shall" means "must." 1967 Op. Att'y Gen. No. 67-140.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Cancellation of Instruments § 6; 39 Am. Jur. 2d Intoxicating Liquors § 196.

48 C.J.S. Intoxicating Liquors § 175.

60-6B-8. Repealed.

Repeals. — Laws 1991, ch. 257, § 5 repeals 60-6B-8 NMSA 1978, as enacted by Laws 1981, ch. 39, § 44, relating to death of licensee or dissolution or termination of the

licensed business, effective June 14, 1991. For provisions of former section, see 1987 Replacement Pamphlet.

60-6B-9. Discontinuance of business or death of licensee; judicial sales.

A. If a retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee discontinues business for any reason or the licensee dies, the stock of alcoholic beverages owned at the time of the discontinuation of business or the death of the licensee may be sold in whole or in part to any other retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee or to a New Mexico wholesaler without the seller incurring criminal or civil liability under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

B. If the stock of alcoholic beverages is sold under execution or attachment or by order of a court, the stock shall be sold only to other New Mexico retailers, dispensers, canopy licensees, restaurant licensees, club licensees, governmental licensees or their lessees or to a New Mexico wholesaler.

History: Laws 1981, ch. 39, § 75.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 115.

48 C.J.S. Intoxicating Liquors § 115.

60-6B-10. Locations near church or school; restrictions on licensing.

No license shall be issued by the director for the sale of alcoholic beverages at a licensed premises where alcoholic beverages were not sold prior to July 1, 1981 that is within three hundred feet of a church or school. A license may be granted for a proposed licensed premises if the owner or lessee has, prior to establishment of a church or school located within three hundred feet of the proposed licensed premises, applied for, been granted and maintained a valid building permit for the construction or renovation of the proposed licensed premises and has filed on a form prescribed by the director a notice of intention to apply for transfer of a license to the proposed licensed premises. A license may be granted for a proposed licensed premises if a person has obtained a waiver from a local option district governing body for the proposed licensed premises. A license may be granted for a proposed licensed premises if a person has obtained a restaurant A license or a restaurant B license pursuant to Section 60-6A-4 NMSA 1978. For the purposes of this section, all measurements taken in order to determine the location of licensed premises in relation to churches or schools shall be the straight line distance from the property line of the licensed premises to the property line of the church or school. This provision shall not apply to a church that has been designated as a historical site by the cultural properties review committee and that does not have a regular congregation.

History: Laws 1981, ch. 39, § 45; 1986, ch. 29, § 1; 1997, ch. 223, § 1; 2021, ch. 7, § 34.

Cross references. — For cultural properties review committee, see 18-6-4 NMSA 1978.

The 2021 amendment, effective July 1, 2021, provided that a license may be granted for a "proposed licensed premises" if a person has obtained a restaurant A license or a restaurant B license; and added "A license may be granted for a proposed licensed premises if a person has obtained a restaurant A license or a restaurant B license pursuant to Section 60-6A-4 NMSA 1978".

The 1997 amendment, effective June 20, 1998, deleted "before the effective date of the Liquor Control Act" at the end of the third sentence, deleted the former fourth and fifth sentences relating to a waiver being granted for licensed premises of at least fifteen stories in class A counties after the effective date of that act, and made minor stylistic changes.

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The phrase "property line of the licensed premises" in Section 60-6B-10 NMSA 1978 refers to the outer boundary of the licensed premises themselves, that is, the premises actually used to sell, serve, or consume

alcohol. *City of Santa Fe v. Tomada*, 2014-NMCA-022, cert. granted, 2014-NMCERT-001.

Measurement to the boundary of the licensed premises. — Where the straight-line distance from the actual licensed premises to the north boundary of the school grounds was 377.53 feet and the straight-line distance from the boundary of the real property on which the licensed premises was located to the school grounds was 155.05 feet, the location of the licensed premises did not violate the distance prohibition of Section 60-6B-10 NMSA 1978. *City of Santa Fe v. Tomada*, 2014-NMCA-022, cert. granted, 2014-NMCERT-001.

Section applies to transfer of license. — Although Section 60-6B-2 NMSA 1978 and this section refer only to a license "issued", the sections apply equally to the transfer of a license; therefore, the decision by the director of the alcohol and gaming division of the regulation and licensing department granting an application for transfer of a liquor license was reviewable by way of the statutory appeal provided in Subsection M (now Q) of 60-6B-2 NMSA 1978. *Regents of Univ. of N.M. v. Hughes*, 1992-NMSC-049, 114 N.M. 304, 838 P.2d 458.

Functional test to be used. — Courts should apply a functional test to decide whether property located within

300 feet of a proposed licensed premises is or is not a school; however, this does not mean that only the building or other structure used for educational purposes falls within the definition of "school" and that adjacent property, even if used for a parking lot, may not be considered as meeting the functional test; any such adjacent land used for school purposes, which may include the parking of vehicles used by students in attending classes or otherwise participating in educational or instructional activities, may fall within the definition of "school". *Regents of Univ. of N.M. v. Hughes*, 1992-NMSC-049, 114 N.M. 304, 838 P.2d 458.

Standards for waiver must be defined and uniformly applied. — Any action taken by a home rule municipality to condition its consent to waive the distance requirement of this section must have uniform application to all persons requesting the waiver and must contain definable standards for the imposition of those conditions. 1980 Op. Att'y Gen. No. 80-23.

Waiver may not be conditioned on restriction of operations. — There is no express authority for a local government to limit or restrict the operation of a licensee as a condition for approving the waiver of the distance requirement imposed by this section, nor can such authority

be inferred in view of the state's preemptive role in the regulation of liquor establishments. 1980 Op. Att'y Gen. No. 80-23.

To determine proximity of proposed liquor establishment to an established church or school, the measurement should be made between the limits of the real property of the church or school within which the ordinary and usual activities incident to such institutions are conducted and that portion of the structure in which alcoholic beverages are actually to be sold. 1974 Op. Att'y Gen. No. 74-18.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 139, 147 to 152, 156.

"School," "schoolhouse," or the like within statute prohibiting liquor sales within specified distance thereof, 49 A.L.R.2d 1103.

"Church" or the like within statute prohibiting liquor sales within specified distance thereof, 59 A.L.R.2d 1439.

Measurement of distance for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base, 4 A.L.R.3d 1250.

48 C.J.S. Intoxicating Liquors § 136.

60-6B-11. Repealed.

Repeals. — Laws 2021, ch. 7, § 36 repealed 60-6B-11 NMSA 1978, as enacted by Laws 1981, ch. 39, § 46, relating to locations near military installations, restrictions on

licensing, effective July 1, 2021. For provisions of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

60-6B-12. Inter-local option district and inter-county transfers.

A. Dispenser's and retailer's licenses originally issued before July 1, 1981, except rural dispenser's and rural retailer's licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978, and except canopy licenses replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978 before calendar year 2017 or after calendar year 2020, may be transferred to any location within the state, except class B counties having a population of between fifty-six thousand and fifty-seven thousand according to the 1980 federal decennial census, the municipalities located within those class B counties and any municipality or county that prohibits by election the transfer of a license from another local option district, without regard to the limitations on the maximum number of licenses provided in Section 60-6A-18 NMSA 1978, not otherwise contrary to law, subject to the approval of transferring locations of those liquor licenses by the governing body for that location; provided that the requirements of the Liquor Control Act [60-3A-1 NMSA 1978] and department regulations for the transfer of licenses are fulfilled; and provided further that:

(1) beginning in calendar year 1997, no more than ten dispenser's or retailer's licenses shall be transferred to any local option district in any calendar year; and

(2) the dispenser's or retailer's licenses transferred under this section shall count in the computation of the limitation of the maximum number of licenses that may be issued in the future in any local option district as provided in Section 60-6A-18 NMSA 1978 for the purpose of determining whether additional licenses may be issued in the local option district under the provisions of Subsection H of Section 60-6B-2 NMSA 1978.

B. Transfer of location of a liquor license pursuant to Subsection A of this section shall become effective upon approval of the local governing body, unless within one hundred twenty days after the effective date of the Liquor Control Act a petition requesting an election on the question of approval of statewide transfers of liquor licenses into that local option district is filed with the clerk of the local option district and the petition is signed by at least five percent of the number of registered voters of the district. The clerk of the district shall verify the petition signatures. If the petition is verified as containing the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of approving or disapproving statewide transfers of liquor licenses into that district. Notice of such election shall be published as provided in the Local

Election Act [Chapter 1, Article 22 NMSA 1978], and the election shall be held within sixty days after the date the petition is verified or it may be held in conjunction with a regular election of the governing body if such election occurs within sixty days after the date of verification. If a majority of the registered voters of the district voting in such election votes to approve statewide transfers of liquor licenses into the local option district, each license proposing to be transferred shall be subject to the approval of the governing body. If the voters of the district voting in the election vote against the approval, then all statewide transfers of liquor licenses pursuant to Subsection A of this section shall be prohibited in that district, unless a petition is filed requesting the question be again submitted to the voters as provided in this subsection. The question of approving or disapproving statewide transfers of liquor licenses into the local option district shall not be submitted again within two years from the date of the last election on the question.

C. Any dispenser's license transferred pursuant to this section outside its local option district shall only entitle the licensee to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises. This subsection shall not apply to any license transferred out of a class B county having a population of between fifty-six thousand and fifty-seven thousand according to the 1980 federal decennial census.

D. Rural dispenser's, rural retailer's and rural club licenses issued under any former act may be transferred to any location, subject to the restrictions as to location contained in the Liquor Control Act, within the unincorporated area of the county in which they are currently located; provided that they shall not be transferred to any location within ten miles of another licensed premises; and provided further that all requirements of the Liquor Control Act and department regulations for the transfer of licenses are fulfilled.

History: Laws 1981, ch. 39, § 113; 1984, ch. 58, § 5; 1985, ch. 183, § 1; 1991, ch. 257, § 3; 1997, ch. 55, § 1; 2015, ch. 114, § 1; 2021, ch. 7, § 16.

Cross references. — For definition of "department," see 60-3A-3F NMSA 1978.

The 2021 amendment, effective July 1, 2021, modified license provisions for certain inter-local option district transfers; in Subsection A, after "rural retailer's licenses", deleted "and canopy licenses", and after "Section 60-6B-16 NMSA 1978", added "and except canopy licenses replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978 before calendar year 2017 or after calendar year 2020"; in Subsection B, after "shall be published as provided in", changed "Section 3-8-35 NMSA 1978" to "the Local Election Act"; and in Subsection C, added the last sentence.

The 2015 amendment, effective June 19, 2015, amended the Liquor Control Act by removing the restriction that the transfer of a dispenser's license does not lower the number of dispensers' and retailer's licenses below that number allowed by law in the local option district from which a license will be transferred and removed the requirement that the dispenser's or retailer's license that is transferred must be operated or leased by the person who transfers the license for at least one year from the date of the approval of the transfer; in the catchline, after "district", added "and inter-county"; in the introductory paragraph of Subsection A, deleted "All", after "transferring locations of", deleted "such" and added "those", after "liquor licenses", deleted "of" and added "by", after "governing body for that location", deleted "and", after "provided", deleted "all" and added "that", and after "provided further", added "that"; deleted Paragraph (1) of Subsection A and redesignated former Paragraphs (2) and (3) as

Paragraphs (1) and (2) of Subsection A; in Paragraph (1) of Subsection A, after the second occurrence of "year", added "and"; in Paragraph (2) of Subsection A, after "Subsection", deleted "E" and added "H", and after "NMSA 1978", deleted "and"; deleted Paragraph (4) of Subsection A; at the beginning of Subsection B, deleted "Transfers" and added "Transfer", and after "location of", deleted "each" and added "a", and in Subsection D, after "currently located; provided", added "that".

The 1997 amendment, effective April 8, 1997, in Paragraph A(1), added "beginning in calendar year 1997," to the beginning of the paragraph and substituted "ten" for "five" preceding "dispenser's"; in Paragraph A(4), inserted "or leased" following "shall be operated"; and in Subsection B, deleted "during the period of economic adjustment" at the end of the third sentence.

The 1991 amendment, effective June 14, 1991, deleted "Period of economic adjustment" at the beginning of the catchline; deleted former Subsections A to C and H, relating to the period of economic adjustment; redesignated former Subsections D to G as present Subsections A to D; in Subsection A, rewrote the introductory paragraph, added present Paragraph (2), redesignated former Paragraphs (2) and (3) as present Paragraphs (3) and (4) and deleted former Paragraph (4); in Subsection B, substituted "3-8-35" for "3-8-2" in the fourth sentence; substituted "transfer of licenses" for "issuance of new licenses" near the end of Subsection D; and made related changes and minor stylistic changes throughout the section.

Effective date of the Liquor Control Act. — The effective date of the Liquor Control Act, referred to in Subsection B, means the effective date of Laws 1981, Chapter 39, which is July 1, 1981.

60-6B-13. Repealed.

Repeals. — Laws 1997, ch. 55, § 2 repeals 60-6B-13 NMSA 1978, as enacted by Laws 1981, ch. 39, § 115, relating to prohibited acquisitions, effective April 8, 1997.

For provisions of former section, see 1994 Replacement Pamphlet.

60-6B-14. Canopy license definition.

As used in the Liquor Control Act [60-3A-1 NMSA 1978], "canopy license" means a license which was initially issued prior to January 1, 1988 pursuant to Laws 1981, Chapter 39, Section 117 and which permits the licensee to dispense alcoholic beverages in the same manner as permitted by a dispenser's license, subject to the provisions of Section 60-6B-16 NMSA 1978.

History: 1978 Comp., § 60-6B-14, enacted by Laws 1988, ch. 12, § 2.

Repeals and reenactments. — Laws 1988, ch. 12, § 2, repeals former 60-6B-14 NMSA 1978, as enacted by Laws 1981, ch. 39, § 116, and enacts the above section, effective

May 18, 1988. For provisions of former section, see 1987 Replacement Pamphlet.

Compiler's notes. — Laws 1981, Chapter 39, Section 117, referred to in this section, was codified as the prior version of 60-6B-15 NMSA 1978, the provisions of which are in the 1987 Replacement Pamphlet.

60-6B-15. Repealed.

Repeals. — Laws 2021, ch. 7, § 36 repealed 60-6B-15 NMSA 1978, as enacted by Laws 1988, ch. 12, § 3, relating

to purpose, effective July 1, 2021. For provisions of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

60-6B-16. Special provisions for replacement of canopy licenses; transfer tax.

A. On July 1, 1988, notwithstanding the provisions of Section 60-6A-18 NMSA 1978, each canopy license, upon the payment to the department of a one-time transfer tax of five thousand dollars (\$5,000) and the applicable annual license renewal fee, shall become a dispenser's license.

B. The location of a dispenser's license issued pursuant to this section may only be transferred within the local option district in which the replaced canopy license was located on January 1, 1988 subject to the requirements of Sections 60-6B-2 and 60-6B-4 NMSA 1978 and the limitations set forth in Subsection E of this section. After a transfer of location as provided in this subsection, the license shall be operated by the person who transfers the location of the license for a period of at least one year from the date of approval of the transfer by the department.

C. Ownership of a dispenser's license issued pursuant to this section may be transferred in the same manner as provided for the transfer of ownership of dispenser's licenses issued under any former act to the Liquor Control Act [60-3A-1 NMSA 1978] subject to the requirements of Sections 60-6B-2 and 60-6B-4 NMSA 1978 and the limitations set forth in Subsection E of this section. After a transfer of ownership as provided in this subsection, the location of the license shall not be transferred for a period of at least one year from the date of approval of the transfer of ownership by the department.

D. A dispenser's license issued pursuant to this section may be leased in the same manner as provided for the lease of dispenser's licenses issued under any former act to the Liquor Control Act subject to approval of the department and the limitations set forth in Subsection E of this section.

E. If the location of a canopy license or a dispenser's license issued pursuant to this section is transferred prior to June 30, 1995 by a person who applies to the department to acquire ownership of the license after January 1, 1988 or if the location of a canopy license or a dispenser's license issued pursuant to this section is transferred prior to June 30, 1995 pursuant to a lease agreement entered into after January 1, 1988, the license shall only entitle the licensee or his lessee to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises. Sale of alcoholic beverages in unbroken packages for consumption off the licensed premises shall not be permitted after a transfer described in this subsection.

F. Any canopy license for which the transfer tax imposed by this section is not paid to the department by August 31, 1988 shall be subject to cancellation by the director as provided in Section 60-6B-5 NMSA 1978.

G. The department shall deposit all transfer taxes collected as provided in this section in the general fund.

History: 1978 Comp., § 60-6B-16, enacted by Laws 1988, ch. 12, § 4.

Repeals and reenactments. — Laws 1988, ch. 12, § 4, repeals former 60-6B-16 NMSA 1978, as enacted by Laws

1981, ch. 39, § 118, and enacts the above section, effective May 19, 1988. For provisions of former section, see 1987 Replacement Pamphlet.

60-6B-17, 60-6B-18. Repealed.

Repeals. — Laws 1988, ch. 12, § 5 repeals 60-6B-17 and 60-6B-18 NMSA 1978, as enacted by Laws 1981, ch. 39, §§ 119 and 120, relating to renewal of canopy license

fees and to dispenser's or retailer's licenses which had co-users, effective May 18, 1988. For provisions of former sections, see the 1987 Replacement Pamphlet.

60-6B-19. Retailers and dispensers; segregated sales; table wines excepted.

A. Except as provided in Subsection B of this section, the director shall by rule develop procedures for segregated alcohol sales by every retailer or dispenser who sells alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises and whose sales are less than sixty percent of their total sales, giving serious consideration to the potentially adverse impact of segregated sales on different sizes of the establishments of the retailer or dispenser. The rules shall include:

- (1) a provision to allow segregated sales of beer or cider that is packaged in a growler;
- (2) a procedure by which a retailer or dispenser may fill or refill a growler and allow the growler to be removed from the licensed premises after the growler is sealed with a tamper-proof seal and the customer's sales receipt is attached to the growler; and
- (3) a requirement that a retailer or dispenser shall sterilize a growler provided by a customer before the growler is refilled and sealed.

B. There shall not be segregated sales of table wine by retailers or dispensers who sell alcoholic beverages in the manner described in Subsection A of this section.

C. For purposes of this section, "table wine" means wine containing fourteen percent or less alcohol by volume when bottled or packaged by the manufacturer, but may also include:

- (1) wine that is sealed or capped by cork closure and aged two years or more;
- (2) wine that contains more than fourteen percent alcohol by volume produced solely as a result of the natural fermentation process and not produced with the addition of wine spirits, brandy or alcohol; or
- (3) vermouth and sherry.

History: Laws 1993, ch. 68, § 36; 2003, ch. 376, § 1; 2016, ch. 73, § 2.

The 2016 amendment, effective July 1, 2016, required the director of the alcohol and gaming division of the regulation and licensing department to develop procedures regarding the sale of beer and cider packaged in a growler; in Subsection A, after "director shall by", deleted "regulation" and added "rule", after "giving serious consideration",

deleted "in the regulation process", after "the establishment of the retailer or dispenser", added "The rules shall include", and added new Paragraphs (1) through (3).

The 2003 amendment, effective July 1, 2003, added "table wines excepted" to the section heading; in present Subsection A, added the subsection designation and inserted "Except as provided in Subsection B of this section" and added Subsections B and C.

60-6B-20. Licensed production facilities; alternating proprietorship.

With the approval of the alcohol and tobacco tax and trade bureau of the United States department of the treasury, and subject to the provisions of the Liquor Control Act, an alternating proprietorship may be established so that the manufacturing facilities and equipment of a person who holds:

A. a craft distiller's license may be used by another person who holds a craft distiller's license to manufacture or produce spiritous liquors;

B. a winegrower's license may be used by another person who holds a winegrower's license to manufacture or produce wine; and

C. a small brewer's license may be used by another person who holds a small brewer's license to manufacture or produce beer.

History: Laws 2015, ch. 102, § 7.

Effective dates. — Laws 2015, ch. 102, § 11 made Laws 2015, ch. 102, § 7 effective July 1, 2015.

60-6B-21. Licensed retailer cooperatives.

A. A person who holds a retailer's license or a person who holds a dispenser's license and who is allowed to sell alcoholic beverages in unbroken packages that are for consumption off premises and are not for resale may form a cooperative with one or more other persons who hold a retailer's or dispenser's license for the purposes of the advertisement or purchase of alcoholic beverages for retail sale.

B. The director shall promulgate rules to implement the provisions of this section, including the form for cooperative agreements.

History: Laws 2015, ch. 102, § 8.

Effective dates. — Laws 2015, ch. 102, § 11 made Laws 2015, ch. 102, § 8 effective July 1, 2015.

ARTICLE 6C

Suspension and Revocation of Licenses

Sec.

60-6C-1. Grounds for suspension, revocation or administrative fine; reporting requirement.

60-6C-2. Hearings; location; open to public; hearing officer.

60-6C-3. Repealed.

60-6C-4. Administrative proceedings; complaints; investigation; order to show cause; service; hearings.

Sec.

60-6C-5. Administration of oaths; production of documents; witnesses.

60-6C-6. Appeal.

60-6C-7. Repealed.

60-6C-8. Restriction on license after revocation.

60-6C-9. Compromising liability.

60-6C-1. Grounds for suspension, revocation or administrative fine; reporting requirement.

A. The director may suspend or revoke the license or permit or fine the licensee in an amount not more than ten thousand dollars (\$10,000), or both, when the director finds that a licensee has:

(1) violated any provision of the Liquor Control Act [60-3A-1 NMSA 1978] or any rule or order promulgated pursuant to that act;

(2) been convicted of a felony pursuant to the provisions of the Criminal Code [30-1-1 NMSA 1978], the Liquor Control Act or federal law; or

(3) permitted the licensee's licensed premises to remain a public nuisance in the neighborhood where it is located after written notice from the director that investigation by the department has revealed that the establishment is a public nuisance in the neighborhood.

B. The director shall suspend or revoke the license or permit and may fine the licensee in an amount not to exceed ten thousand dollars (\$10,000), or both, when the director finds that any licensee or:

(1) the licensee's employee or agent knowingly has sold, served, delivered or given an alcoholic beverage to a minor in violation of Section 60-7B-1 NMSA 1978 or to an intoxicated person in violation of Section 60-7A-16 NMSA 1978, on two separate occasions within any twelve-month period; or

(2) the licensee's agent has made any material false statement or concealed any material facts in the licensee's application for the license or permit granted the licensee pursuant to the provisions of the Liquor Control Act.

C. A licensee aggrieved by a revocation, suspension or fine proposed to be imposed by the director pursuant to this section shall be entitled to the hearing procedures set forth in Chapter 60, Article 6C NMSA 1978 before the revocation, suspension or fine shall be effective.

D. A charge filed against a licensee by the department and the resulting disposition of the charge shall be reported to the department of public safety.

E. For purposes of this section, "licensee" includes any person issued an alcoholic beverage delivery permit.

History: Laws 1981, ch. 39, § 97; 1993, ch. 68, § 11; 1998 (1st S.S.), ch. 16, § 1; 2021, ch. 7, § 17.

Cross references. — For cancellation of license for nonuse, failure to engage in business, see 60-6B-7 NMSA 1978.

The 2021 amendment, effective July 1, 2021, defined "licensee" for purposes of this section, eliminated a requirement to report a charge against a licensee to local law enforcement, and made technical amendments; in Paragraph B(1), after "served", added "delivered"; in Subsection D, after "department of public safety", deleted "and local law enforcement agencies whose jurisdictions include the licensed establishment"; and added Subsection E.

The 1998 (1st S.S.) amendment, effective August 2, 1998, deleted former Subsection C, relating to penalties for selling, serving or delivering alcoholic beverages to an intoxicated person or a minor through a drive-up window, redesignated the subsequent subsections accordingly, and made a minor stylistic change in present Subsection C.

The 1993 amendment, effective July 1, 1993, inserted "or administrative fine" in the catchline; rewrote the introductory paragraph of Subsection A which read "A liquor control hearing officer may suspend or revoke the license or fine the licensee, or both when he finds that any licensee has"; rewrote Paragraph (2) of Subsection A which read "made any material false statement in his application for the license granted him under the provisions of the Liquor Control Act"; deleted "suffered or" at the beginning of Paragraph (3) of Subsection A; added current Subsections B to D; redesignated former Subsection B as Subsection E; substituted "department of public safety" for "state police" and "jurisdictions" for "jurisdiction" in Subsection E; and made a minor stylistic change.

ANNOTATIONS

Criminal conviction is not a condition precedent to the imposition of a fine. — The criminal conviction of a server under Section 60-7B-1 NMSA 1978 is not a condition precedent to the imposition of a civil fine on the licensee pursuant to Subsection A of Section 60-6C-1 NMSA 1978. *Town & Country Food Stores, Inc. v. N. M. Regulation & Licensing Dep't*, 2012-NMCA-046, 277 P.3d 490.

Where, in a sting operation, the licensee's employee sold beer to a minor; a hearing officer found that the licensee violated Section 60-7B-1 NMSA 1978 and imposed a fine on the licensee; and the district attorney dismissed charges filed against the employee after the employee completed a pre-prosecution program, the criminal conviction of the employee was not a condition precedent to the imposition of the fine under Subsection A of Section 60-6C-1 NMSA 1978. *Town & Country Food Stores, Inc. v. N. M. Regulation & Licensing Dep't*, 2012-NMCA-046, 277 P.3d 490.

Superintendent has inherent power to cancel and revoke licenses. — The chief of the division (now director of alcohol and gaming division), having power to grant liquor licenses under the provisions of the Liquor Control Act has likewise inherent power to cancel and revoke any license which he finds has been, for any reason, issued without authority or issued in conflict with the statutes

governing and limiting the issuance thereof. *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792.

Presumption that valid license originally issued. — This section, in setting up grounds for revocation of a license, obviously implies that a prior valid license had been issued and the grounds of revocation enumerated in the statute relate to misconduct of one kind or another on the part of the licensee. *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792.

Mistake of facts in issuing license ground for revocation. — A license issued under a mistake of facts necessary to authorize its issuance may be revoked; and the officer issuing it is not estopped by his conduct in issuing it to revoke or cancel it. Such a proceeding does not come under the statute authorizing a revocation of a license because of misconduct of the holder. *Baca v. Grisolano*, 1953-NMSC-028, 57 N.M. 176, 256 P.2d 792.

Sale of liquor on Sunday. — Making a sale of intoxicating liquor on Sunday was grounds for revocation of dispenser's license. *Kearns v. Aragon*, 1959-NMSC-102, 65 N.M. 119, 333 P.2d 607.

Revocation needs evidential support. — Action of chief of division (now director of alcohol and gaming division) in revoking a license on the ground that it was issued illegally must be supported by some evidence of probative value, or else the decision of the liquor authority must be set aside. *Baca v. Chaffin*, 1953-NMSC-006, 57 N.M. 17, 253 P.2d 309.

As sale of liquor during prohibited hours. — Where proprietor permits his employees to sell liquor during prohibited hours, he would be liable under the statute for the violation and his license would be subject to revocation. 1945-46 Op. Att'y Gen. No. 45-4680.

Failure to pay wholesaler not grounds for revocation. — No retailer, dispenser or club licensee subjects himself to a suspension or revocation of his license by failing to pay his bills to a licensed wholesaler within 30 days from the date of delivery. 1957-58 Op. Att'y Gen. No. 58-153.

Premises remaining public nuisance. — A hearing officer may revoke a liquor license after hearing where the licensee permits his premises to remain a public nuisance after written notice from the director. 1987 Op. Att'y Gen. No. 87-15.

Law reviews. — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 203.

Showing as to diversion or other misconduct which will support revocation of liquor permit, 76 A.L.R. 1245.

Revocation of liquor license of one person as ground for refusal of license to another, 153 A.L.R. 836.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Revocation of license for violation of regulation forbidding employee or entertainer from drinking or mingling with patrons at bar or tavern, or soliciting drinks from them, 99 A.L.R.2d 1216.

Sale or use of narcotics or dangerous drugs on licensed premises as ground for revocation or suspension of liquor license, 51 A.L.R.3d 1130.

48 C.J.S. Intoxicating Liquors § 175.

60-6C-2. Hearings; location; open to public; hearing officer.

All hearings held pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] shall be conducted by the director or a hearing officer appointed by the director and shall be held in the county in which the licensed premises or the business of the person issued an alcoholic beverage delivery permit that is the subject matter of the hearing is located. All such hearings shall be open to the public.

History: Laws 1981, ch. 39, § 98; 1987, c. 255, § 1; 1993, ch. 68, § 12; 2021, ch. 7, § 18.

The 2021 amendment, effective July 1, 2021, allowed public hearings to be held at the business of the person issued an alcoholic beverage delivery permit; and after "licensed premises", added "or the business of the person issued an alcoholic beverage delivery permit".

The 1993 amendment, effective July 1, 1993, rewrote the first sentence.

ANNOTATIONS

Liquor control hearing officer presides only at hearings that result from formal charges looking

toward suspension or revocation of an existing license. Other hearings under the liquor laws, such as hearings on whether a new license should be issued in a given locality or whether an existing license should be transferred to a new location, need not be heard by a liquor control hearing officer, but can be heard by the chief of the division of liquor control (now director of alcohol and gaming division). 1963-64 Op. Att'y Gen. No. 63-103.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 206.

Right to hearing before revocation or suspension of liquor license, 35 A.L.R.2d 1067.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-3. Repealed.

Repeals. — Laws 1993, ch. 68, § 57 repeals 60-6C-3 NMSA 1978, as enacted by Laws 1981, ch. 39, § 99, relating to the liquor control hearing officer effective June 18,

1993. For provisions of former section see 1992 Replacement Pamphlet.

60-6C-4. Administrative proceedings; complaints; investigation; order to show cause; service; hearings.

A. Whenever a person lodges a signed, written complaint with the department alleging that a licensee has violated any of the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], unless the complaint is deficient on its face, the director shall request that the department of public safety investigate the complaint.

B. The department of public safety shall investigate the complaint and make a written report to the director.

C. If the director believes from the report that probable cause exists for filing charges against the licensee for the revocation or suspension of the licensee's license or permit or for fining the licensee, or for both, the director or the director's designee shall file in the department a charge against the licensee in the name of the state, stating the nature of the grounds relied upon for the filing, the approximate date of the alleged violation and the names and addresses of the witnesses who are expected to give testimony or evidence against the licensee.

D. After charges have been filed, the director shall issue a signed order for the licensee to appear at a hearing to explain, on the basis of any ground set out in the charge, why the license or permit should not be revoked or suspended or why the licensee should not be fined, or both.

E. The director shall keep the original of the charge and the order to show cause on file in the director's office.

F. The director shall appoint a hearing officer no later than ten days prior to the date set for the hearing at which the licensee shall appear to explain why the licensee's license or permit should not be revoked or suspended or why the licensee should not be fined, or both.

G. The director shall have a copy of the charge and a copy of the order to show cause sent to the licensee or the licensee's resident agent at the agent's last known address by certified mail at least fourteen days before the date set for the hearing on the order to show cause.

H. At a hearing on an order to show cause, the director shall cause a record of hearing to be made, which shall record:

- (1) the style of the proceedings;
- (2) the nature of the proceedings, including a copy of the charge and a copy of the order to show cause;
- (3) the place, date and time of the hearing and all continuances or recesses of the hearing;
- (4) the appearance or nonappearance of the licensee;
- (5) if the licensee appears with an attorney, the name and address of the attorney;
- (6) a record of all evidence and testimony and a copy or record of all exhibits introduced in evidence;
- (7) the findings of fact and law as to whether the licensee has violated the Liquor Control Act as set out in the charge; and

(8) the decision of the director.

I. If the licensee fails to appear without good cause at the time and place designated in the order to show cause for the hearing, the director shall order the nonappearance of the licensee to be entered in the record of hearing and shall order the license or permit revoked or suspended or the licensee fined, or both, on all the grounds alleged in the charge and shall cause the record of hearing to show the particulars in detail. In such a case, there shall be no reopening, appeal or review of the proceedings unless pursued by a co-owner of a license who did not receive notice of the hearing.

J. If the licensee admits guilt on all grounds set out in the charge, the director shall order the revocation or suspension of the license or permit or the licensee fined, or both, and cause a record of hearing to be made showing the facts and particulars of the director's order of revocation or suspension of the license or permit or fine of the licensee, or both. In such a case, there shall be no review or appeal of the proceedings.

K. If the licensee appears at the hearing and does not testify or denies guilt of any of the grounds set out in the charge, the hearing shall proceed as follows:

(1) the director or the hearing officer shall administer oaths to all witnesses, the department shall cause all testimony and evidence in support of the grounds alleged in the charge to be presented in the presence of the licensee and the director shall allow the licensee or the licensee's attorney to cross-examine all witnesses;

(2) the licensee shall be allowed to present testimony and evidence the licensee may have in denial or in mitigation of the grounds set out in the charge;

(3) the department shall have the right to cross-examine the licensee or any witness testifying in the licensee's favor;

(4) the department shall present any evidence or testimony in rebuttal of that produced by the licensee;

(5) the director or the hearing officer shall make a finding on each ground alleged and a finding of the guilt or innocence of the licensee on each ground;

(6) if the licensee is found guilty on any ground alleged and proved, the director shall make an order of revocation or suspension of the license or permit or fine of the licensee, or both; and

(7) the rules of evidence shall not be required to be observed, but the order of suspension or revocation or fine, or both, shall be based upon substantial, competent and relevant evidence and testimony appearing in the record of hearing.

L. No admission of guilt, admission against interest or transcript of testimony made or given in a hearing pursuant to this section shall be received or used in criminal proceedings wherein the licensee is a defendant; provided, however, if the licensee commits perjury in a hearing, the evidence shall be admissible in a perjury trial if otherwise competent and relevant.

M. The director shall adopt reasonable rules setting forth uniform standards of penalties concerning fines and suspensions imposed by the director.

N. For purposes of this section, "licensee" includes a person issued an alcoholic beverage delivery permit.

History: Laws 1981, ch. 39, § 100; 1993, ch. 68, § 13; 2021, ch. 7, § 19.

Cross references. — For service of process, see Rule 1-004 NMRA.

The 2021 amendment, effective July 1, 2021, included "permits" within the provisions of the section, allowed license co-owners, who did not receive notice of a hearing, to appeal or reopen proceedings in cases where the licensee failed to appear at a hearing, defined "licensee" for purposes of this section, and made technical amendments; after "license", added "or permit" throughout; in Subsection I, after "review of the proceedings", added "unless pursued by a co-owner of a license who did not receive notice of the hearing"; and added Subsection N.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

ANNOTATIONS

Offer of proof. — In administrative proceedings, where a party's proffered evidence is denied on the ground of relevance, the party has a right to make an offer of proof to show on appeal what the content of the evidence was as well as testimony in regard to the evidence that would bear on relevance. *ERICA, Inc. v. N.M. Regulation & Licensing Dep't*, 2008-NMCA-065, 144 N.M. 132, 184 P.3d 444.

Purpose of proceeding. — The object of an administrative proceeding to revoke a liquor license is not intended as a punishment of the licensee. The purpose is to ensure so far as possible the decent and orderly conduct of a business affecting the public health, morals, safety and welfare. *Kearns v. Aragon*, 1959-NMSC-102, 65 N.M. 119, 333 P.2d 607.

Proceeding in nature of civil action. — A proceeding before the chief of division of liquor control (now director of alcohol and gaming division) to revoke a liquor

license is not a criminal proceeding; rather it is an administrative proceeding in the nature of a civil action. *Kearns v. Aragon*, 1959-NMSC-102, 65 N.M. 119, 333 P.2d 607; *Lake v. Garcia*, 1978-NMSC-035, 91 N.M. 608, 577 P.2d 1254.

Section requires the director to sign order to show cause issued to licensee. Absent the director's signature, the process is void. Any order issued pursuant to defective process is null and void for lack of jurisdiction. *Lasley v. Baca*, 1981-NMSC-041, 95 N.M. 791, 626 P.2d 1288.

Revocation proceedings are not governed by rules of criminal prosecutions. In such proceedings the offense need not be established beyond a reasonable doubt. *Kearns v. Aragon*, 1959-NMSC-102, 65 N.M. 119, 333 P.2d 607.

Certain constitutional defenses not available. — The constitutional defenses of unreasonable search and seizure and self-incrimination are not available in revocation proceedings. *Kearns v. Aragon*, 1959-NMSC-102, 65 N.M. 119, 333 P.2d 607.

Testimony of entrapped witnesses competent. — In proceedings before the chief of division of liquor control (now director of alcohol and gaming division), even assuming that the action of the state police officers constituted entrapment, this fact alone does not render witnesses' testimony unsubstantial, incompetent, irrelevant or incredible. The mere circumstance, standing alone, that the state's witnesses were engaged in a species of entrapment does not render their testimony unworthy of belief. *Kearns v. Aragon*, 1959-NMSC-102, 65 N.M. 119, 333 P.2d 607.

License cannot be cancelled by operation of law as to do so would relieve the chief of division (now director of alcohol and gaming division) of his duties to make a determination of facts authorizing the cancellation and to effect the cancellation pursuant thereto. *Crowe v. State ex rel. McCulloch*, 1971-NMSC-017, 82 N.M. 296, 480 P.2d 691.

Determination of facts required prior to cancellation. — Before cancelling a license pursuant to this duty,

the chief of division (now director of alcohol and gaming division) must, of necessity, determine the facts which would authorize the cancellation. *Crowe v. State ex rel. McCulloch*, 1971-NMSC-017, 82 N.M. 296, 480 P.2d 691.

When order suspending license fatally defective. — Order suspending liquor license was fatally defective in that the record did not contain a copy of the charge and a copy of the order to show cause, as required by this section. *Jumbo, Inc. v. State ex rel. Branch*, 1970-NMSC-025, 81 N.M. 223, 465 P.2d 280.

Liquor control hearing officer presides only at hearings that result from formal charges looking toward suspension or revocation of an existing license. Other hearings under the liquor laws, such as hearings on whether a new license should be issued in a given locality or whether an existing license should be transferred to a new location, need not be heard by a liquor control hearing officer, but can be heard by the chief of the division of liquor control (now director of alcohol and gaming division). 1963-64 Op. Att'y Gen. No. 63-103.

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 206.

Entrapment to commit offense against laws regulating sales of liquor, 55 A.L.R.2d 1322.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged, 5 A.L.R.4th 1128.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-5. Administration of oaths; production of documents; witnesses.

The director shall have the power to administer oaths and compel the attendance of witnesses and the production of documents, records and physical exhibits in any hearing held under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] by the issuance and service of subpoenas and subpoenas duces tecum. The hearing officer shall have authority to rule upon offers of proof and receive relevant evidence, take, allow or cause depositions to be taken, regulate the course of the hearing, hold conferences for the settlement or simplification of the issues by consent of the parties, dispose of procedural requests or similar matters and reopen the hearing for the taking of additional evidence at any time prior to the taking of an appeal.

History: Laws 1981, ch. 39, § 101; 1993, ch. 329, § 5.

Cross references. — For witnesses' fees, see 38-6-4 NMSA 1978.

For subpoena for production of documentary evidence, see Rule 1-045 NMRA.

The 1993 amendment, effective June 18, 1993, substituted "director" for "liquor control hearing officer" in the first sentence and deleted the former second sentence, which read: "All witnesses subpoenaed shall be paid

attendance fees and mileage in like amount and manner as if appearing in a criminal proceeding in a district court of this state."

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 205.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-6. Appeal.

A. A licensee aggrieved or adversely affected by an order of revocation, suspension or fine shall have the right to appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. No appeal shall have the effect of suspending the operation of the order of suspension, revocation or fine, but the liquor control hearing officer may, for good cause shown and upon such terms and conditions as the officer may find are just, in the officer's discretion suspend the operation of the order of suspension, revocation or fine pending the appeal. The court shall tax costs against the losing party.

C. For purposes of this section, "licensee" includes a person issued an alcoholic beverage delivery permit and includes a person issued a server permit pursuant to the Alcohol Server Education Article of the Liquor Control Act [Chapter 60, Article 6E NMSA 1978].

History: Laws 1981, ch. 39, § 102; 1987, ch. 255, § 2; 1993, ch. 329, § 6; 1998, ch. 55, § 72; 1999, ch. 265, § 75; 1999, ch. 277, § 1; 2021, ch. 7, § 20.

Cross references. — For writ of mandamus, see 44-2-1 NMSA 1978.

For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

For Rules of Appellate Procedure, see 12-101 NMRA et seq.

The 2021 amendment, effective July 1, 2021, removed the prohibition on the use of injunctions or writs of mandamus to prevent or enjoin any finding of guilt or order of suspension or revocation or fine made by a liquor control hearing officer, and revised the definition of "licensee" for purposes of this section; in the section heading, deleted "No injunction or mandamus permitted"; in Subsection A, deleted "No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action or proceeding to prevent or enjoin any finding of guilt or order of suspension or revocation or fine made by a liquor control hearing officer under the provisions of Section 60-6C-4 NMSA 1978"; and in Subsection C, after "licensee", added "includes a person issued an alcoholic beverage delivery permit and".

1999 amendments. — Laws 1999, ch. 265, § 75, effective July 1, 1999, substituting "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A, was approved April 8, 1999. However, Laws 1999, ch. 277, § 1, effective July 1, 1999, also amending this section by substituting "39-3-1.1 NMSA 1978" for "12-8A-1 NMSA 1978" in Subsection A, and adding Subsection C, was approved later on April 8, 1999. The section is set out as amended by Laws 1999, ch. 277, § 1. See 12-1-8 NMSA 1978.

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

The 1993 amendment, effective June 18, 1993, added the last sentence in Subsection B.

ANNOTATIONS

Effect of new evidence appeal. — Any new evidence admitted must relate itself to whether the chief of the division of liquor control (now director of alcohol and gaming division) acted arbitrarily, capriciously or fraudulently, since the proceeding under this section is not de novo. *Chiordi v. Jernigan*, 1942-NMSC-053, 46 N.M. 396, 129 P.2d 640 (decided under former law).

Where district court did not have jurisdiction to entertain appeal by city for the transfer of a liquor license by director of the department of alcoholic beverage control (now director of alcohol and gaming division) since no statute allows an appeal from the action of director (superintendent) in transferring a liquor license. *City of Truth or Consequences v. State, Dep't of ABC*, 1973-NMSC-005, 84 N.M. 589, 506 P.2d 333.

Supreme court decides if order sustained by substantial evidence. — Upon review, the supreme court must determine whether the order or findings of the chief of division of liquor control (now director of alcohol and gaming division) were sustained by substantial, competent, relevant and credible evidence. *Kearns v. Aragon*, 1959-NMSC-102, 65 N.M. 119, 333 P.2d 607 (1958).

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 207.

48 C.J.S. Intoxicating Liquors § 178.

60-6C-7. Repealed.

Repeals. — Laws 1993, ch. 68, § 57 repeals 60-6C-7 NMSA 1978, as enacted by Laws 1981, ch. 39, § 103 relating to summary suspensions, effective June 18, 1993. For

provisions of former section see 1992 Replacement Pamphlet.

60-6C-8. Restriction on license after revocation.

If a license is revoked under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], the licensee shall not be issued or be the transferee of a license within two years of the date of the revocation.

History: Laws 1981, ch. 39, § 104.

ANNOTATIONS

Effect of setting aside order on appeal. — Where the liquor chief (now director of alcohol and gaming division) has suspended a liquor license, but the district court had set this order aside, the dealer was entitled to a renewal license subject to revocation or termination in case

the district court's judgment should be reversed. *State v. Romero*, 1944-NMSC-054, 49 N.M. 127, 158 P.2d 850.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 188.

Revocation of liquor license of one person as ground for refusal of license to another, 153 A.L.R. 836.

48 C.J.S. Intoxicating Liquors § 177.

60-6C-9. Compromising liability.

The director is authorized to compromise the penalty for any violations of the Liquor Control Act [60-3A-1 NMSA 1978] or of any department regulation or order when he deems it is in the best interest of the state.

History: Laws 1981, ch. 39, § 105.

ARTICLE 6D

Alcohol Server Education Article

(Repealed by Laws 1999, ch. 277, § 15 and recompiled.)

60-6D-1 to 60-6D-8. Repealed.

Repeals. — Laws 1999, ch. 277, § 15 repeals 60-6D-1 to 60-6D-8 NMSA 1978, as enacted by Laws 1993, ch. 68, §§ 28 to 35 and as amended by Laws 1994, ch. 41, §§ 1 and 2, relating to alcohol server education, effective July 1, 1999. For provisions of former sections, see 1998 Replacement Pamphlet.

Laws 1999, ch. 277, §§ 2 through 13 enacted a new Alcohol Server Education Article of the Liquor Control Act and assigned those provisions as 60-6D-11 through 60-6D-22 NMSA 1978. These sections have been recompiled as 60-6E-1 through 60-6E-12 NMSA 1978 for clarity.

ARTICLE 6E

Alcohol Server Education

Sec.

- 60-6E-1. Article designation; alcohol server education.
- 60-6E-2. Purpose.
- 60-6E-3. Definitions.
- 60-6E-4. Server training required; alcohol service or sales.
- 60-6E-5. Programs required; approval by director; content of program; surety bond.
- 60-6E-6. Repealed.
- 60-6E-7. Server permits; issuance; ownership; fees.

Sec.

- 60-6E-8. Server permit; suspension; revocation; administrative fines; penalties.
- 60-6E-9. Alcohol server education; required for license renewal.
- 60-6E-10. Administrative proceedings; hearings.
- 60-6E-11. Advisory committee created; members; meetings.
- 60-6E-12. Advisory committee; duties.

60-6E-1. Article designation; alcohol server education.

Chapter 60, Article 6E NMSA 1978 may be cited as the "Alcohol Server Education Article of the Liquor Control Act".

History: 1978 Comp., § 60-6D-11, enacted by Laws 1999, ch. 277, § 2; recompiled as 1978 Comp., § 60-6E-1; 2013, ch. 213, § 1.

Recompilations. — Laws 1999, ch. 277, §§ 2 through 13 enacted a new Alcohol Server Education Article of the Liquor Control Act and assigned those provisions as 60-6D-11 through 60-6D-22 NMSA 1978. These sections have

been recompiled as 60-6E-1 through 60-6E-12 NMSA 1978 for clarity.

The 2013 amendment, effective June 14, 2013, changed the NMSA article of the Alcohol Server Education Article of the Liquor Control Act; and after "Article", changed "6D" to "6E".

60-6E-2. Purpose.

The purpose of Chapter 60, Article 6D [6E] NMSA 1978 is to:

- A. enhance the professionalism of persons employed in the alcoholic beverage service industry;
- B. establish a program for servers, licensees and their lessees that includes the study of:
 - (1) the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;

- (2) state law concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;
- (3) methods of recognizing problem drinkers and techniques for intervening with problem drinkers;
- (4) methods of identifying false drivers' licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and
- (5) prevention of fetal alcohol syndrome;
- C. reduce the number of persons who drive while under the influence of intoxicating liquor and mitigate the physical and property damage caused by that behavior; and
- D. reduce the frequency of alcohol-related birth defects.

History: 1978 Comp., § 60-6D-12, enacted by Laws 1999, ch. 277, § 3; recompiled as 1978 Comp., § 60-6E-2.

Bracketed material. — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-3. Definitions.

As used in the Alcohol Server Education Article [Chapter 60, Article 6E NMSA 1978] of the Liquor Control Act:

- A. "director" means the director of the division;
- B. "division" means the alcoholic beverage control division of the regulation and licensing department;
- C. "licensee" means a person issued a license pursuant to the provisions of the Liquor Control Act to sell, serve or dispense alcoholic beverages for consumption and not for resale;
- D. "program" means an alcohol server education course and examination approved by the director to be administered by providers;
- E. "provider" means an individual, partnership, corporation, public or private school or any other legal entity certified by the director to provide a program;
- F. "server" means an individual who sells, serves, or dispenses alcoholic beverages for consumption on or off licensed premises, including persons who manage, direct or control the sale or service of alcohol and when the context requires, includes a person who delivers alcoholic beverages. "Server" does not include officers of a corporate licensee or lessee who do not manage, direct or control the sale, delivery or service of alcohol; and
- G. "server permit" means an authorization issued by the director for a person to be employed or engaged to sell, serve or dispense alcoholic beverages.

History: 1978 Comp., § 60-6D-13, enacted by Laws 1999, ch. 277, § 4; recompiled as 1978 Comp., § 60-6E-3; 2021, ch. 7, § 21.

The 2021 amendment, effective July 1, 2021, revised the definitions of "division" and "server" as used in the Alcohol Server Education article of the Liquor Control Act;

in Subsection B, after "means the", changed "alcohol and gaming" to "alcoholic beverage control"; and in Subsection F, after "sale or service of alcohol", added "and when the context requires, includes a person who delivers alcoholic beverages", and after "control the sale", added "delivery".

60-6E-4. Server training required; alcohol service or sales.

No person shall be employed as a server on a licensed premises unless that person obtains within thirty days of employment alcohol server training pursuant to the provisions of Chapter 60, Article 6E NMSA 1978.

History: 1978 Comp., § 60-6D-4, enacted by Laws 1999, ch. 277, § 5, recompiled as 1978 Comp., § 60-6E-4; Laws 2000, ch. 46, § 1.

The 2000 amendment, effective March 6, 2000, substituted "training" for "permits" in the section heading,

substituted "obtains within thirty days of employment alcohol server training" for "has obtained a server permit", and substituted "Article 6E" for "Article 6D."

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-5. Programs required; approval by director; content of program; surety bond.

- A. The director shall have the authority to approve programs offered by providers.
- B. The program curriculum shall include the following subjects:
- (1) the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;
 - (2) the effect alcohol has on a person when used in combination with legal or illegal drugs;
 - (3) state laws concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;
 - (4) methods of recognizing problem drinkers and techniques for intervening with problem drinkers;
 - (5) methods of identifying false driver's licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and
 - (6) the incidence of alcohol-related birth defects.
- C. The director shall require each provider to post a surety bond in the amount of five thousand dollars (\$5,000). The director may, in the director's discretion, allow a provider to submit other evidence of financial responsibility satisfactory to the director in lieu of posting a surety bond in the amount of five thousand dollars (\$5,000).

History: 1978 Comp., § 60-6D-15, enacted by Laws 1999, ch. 277, § 6; recompiled as 1978 Comp., § 60-6E-5.

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-6. Repealed.

Repeals. — Laws 2021, ch. 7, § 36 repealed 60-6E-6 NMSA 1978, as enacted by Laws 1999, ch. 277, § 7, relating to server permits, failure to produce proof, effective

July 1, 2021. For provisions of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

60-6E-7. Server permits; issuance; ownership; fees.

- A. The director shall issue a server permit to each applicant who obtains a certificate of program completion and provides such other information as may be required by the director. The director may, in the director's discretion, issue temporary server permits if circumstances warrant such issuance.
- B. Server permits shall not be issued to graduates of programs that are not approved by the director.
- C. A server permit is the property of the server to whom it is issued.
- D. The director may charge a fee for the issuance of the server permit.
- E. Server permits shall be valid for a period of three years from the date the server permit was issued.
- F. A certificate of completion of an alcohol server education program issued pursuant to previous law shall remain valid until the date of its expiration.

History: 1978 Comp., § 60-6D-17, enacted by Laws 1999, ch. 277, § 8; recompiled as 1978 Comp., § 60-6E-7; 2013, ch. 213, § 2.

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

The 2013 amendment, effective June 14, 2013, increased the frequency for alcohol server training from every five years to every three years; and in Subsection E, after "for a period of", deleted "five" and added "three".

60-6E-8. Server permit; suspension; revocation; administrative fines; penalties.

The following penalties are in addition to any other penalties available for sales to minors or intoxicated persons in violation of the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or rules of the division:

A. the director may suspend a server's server permit for a period of thirty days or fine the server in an amount not to exceed five hundred dollars (\$500), or both, when the director finds that the server is guilty of a first offense of selling, serving, delivering or dispensing an alcoholic beverage to an intoxicated person in violation of Section 60-7A-16 NMSA 1978 or to a minor in violation of Section 60-7B-1 NMSA 1978;

B. the director shall suspend a server's server permit for a period of one year when the director finds that the server is guilty of a second offense of selling, serving, delivering or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978 or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately from the incident giving rise to the server's first offense;

C. the director shall permanently revoke a server's server permit when the director finds that the server is guilty of a third offense of selling, serving, delivering or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978 or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately from the incidents giving rise to the server's first and second offenses;

D. no person whose server permit is suspended or revoked pursuant to the provisions of this section may be a server of alcoholic beverages on a licensed premises or deliver alcoholic beverages during the period of suspension or revocation;

E. no person whose server permit is suspended may serve or deliver alcoholic beverages on or after the date of suspension unless the person obtains a new server permit in accordance with the provisions of the Alcohol Server Education Article of the Liquor Control Act; and

F. nothing in the Alcohol Server Education Article of the Liquor Control Act shall be interpreted to waive a permit holder's or license holder's liability that may arise pursuant to the provisions of the Liquor Control Act.

History: 1978 Comp., § 60-6D-18, enacted by Laws 1999, ch. 277, § 9; recompiled as 1978 Comp., § 60-6E-8; 2021, ch. 7, § 22.

The 2021 amendment, effective July 1, 2021, provided for delivery of alcoholic beverages, and made certain technical amendments; deleted "In addition to any other penalties available", after "following penalties", changed "may be imposed" to "are in addition to any other penalties available"; after "serving" added "delivering" throughout the section; in Subsection D, after "licensed premises",

added "or deliver alcoholic beverages"; in Subsection E, after "may serve", added "or deliver", and after "provisions of", changed "Article 6D of Chapter 60" to "the Alcohol Server Education Article of the Liquor Control Act; and"; and in Subsection F, after "nothing in", changed "this" to "the Alcohol Server Education Article of the Liquor Control", after "waive", deleted "any" and added "a permit holder's or", and after "provisions of", changed "this" to "the Liquor Control".

60-6E-9. Alcohol server education; required for license renewal.

A licensee seeking renewal of a license shall submit to the division, as a condition of license renewal, proof that the licensee, the lessee, if any, and each server employed by the licensee or lessee during the prior licensing year have or had valid server permits at all times that alcoholic beverages were sold, served, delivered or dispensed.

History: 1978 Comp., § 60-6D-19, enacted by Laws 1999, ch. 277, § 10; recompiled as 1978 Comp., § 60-6E-9; 2021, ch. 7, § 23.

The 2021 amendment, effective July 1, 2021, added language to include that a licensee seeking renewal of

a license show proof, as a condition of license renewal, that the licensee has or had a valid server permit at all times that alcoholic beverages were delivered; and after "served", added "delivered".

60-6E-10. Administrative proceedings; hearings.

A. Hearings for the suspension or revocation of any server's server permit or delivery permit or for imposing a fine on the server, or both, shall be conducted in accordance with the provisions of Sections 60-6C-2 through 60-6C-6 NMSA 1978.

B. The director may suspend or revoke a server permit or delivery permit or impose a fine on a server, or impose a combination of those penalties, only if the server violates the provisions of Section 60-7A-16 or 60-7B-1 NMSA 1978.

History: 1978 Comp., § 60-6D-20, enacted by Laws 1999, ch. 277, § 11; recompiled as 1978 Comp., § 60-6E-10; 2021, ch. 7, § 24.

The 2021 amendment, effective July 1, 2021, added language to include delivery permits in addition to server permits; and in Subsections A and B, after "server permit", added "or delivery permit".

60-6E-11. Advisory committee created; members; meetings.

A. The "alcohol server education advisory committee" is created and is administratively attached to the division. The membership of the committee shall consist of:

- (1) the director;
- (2) the secretary of public safety or his designee;
- (3) the secretary of health or his designee;
- (4) the chief of the traffic safety bureau of the state highway and transportation department or his designee;
- (5) three representatives from the retail liquor industry;
- (6) a representative from the wholesale liquor industry;
- (7) a representative from the insurance industry; and
- (8) a representative from a nonprofit organization whose primary purpose is to reduce drunk driving in New Mexico.

B. The representative members of the committee shall be selected by the director. The director shall serve as chair of the committee.

C. The committee shall meet as often as necessary to conduct business, but no less than twice a year. Meetings shall be called by the director. Five members shall constitute a quorum.

History: 1978 Comp., § 60-6D-21, enacted by Laws 1999, ch. 277, § 12; recompiled as 1978 Comp., § 60-6E-11.

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

60-6E-12. Advisory committee; duties.

The alcohol server education advisory committee shall assist the division with development of:

- A. standards, course requirements and materials for the program;
- B. procedures attendant to the program;
- C. certification standards for providers and instructors; and
- D. certification of alcohol server education programs that meet the minimum standards of the alcohol server education advisory committee.

History: 1978 Comp., § 60-6D-22, enacted by Laws 1999, ch. 277, § 13; recompiled as 1978 Comp., § 60-6E-12.

Recompilations. — See same catchline in notes to 60-6E-1 NMSA 1978.

ARTICLE 7

State Licenses

(Repealed by Laws 1981, ch. 39, § 128.)

60-7-1 to 60-7-33. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-7-1 to 60-7-33 NMSA 1978, relating to the issuance of licenses,

effective July 1, 1981. For present provisions, see 60-6A-1 to 60-6A-20, 60-6B-1 to 60-6B-18 NMSA 1978.

ARTICLE 7A

Offenses

Sec. 60-7A-1. Hours and days of business.

60-7A-2. Repealed.

60-7A-3. Transportation into state without permit; exportation of alcoholic beverages without permit; importation for private use; reciprocal shipping; when unlawful.

60-7A-4. Sale, shipment and delivery unlawful.

60-7A-4.1. Unlawful sale of alcoholic beverages; criminal penalty; forfeiture.

60-7A-4.2. Record of sales; administrative penalties.

60-7A-5. Manufacture, sale or possession for sale when not permitted by Liquor Control Act; criminal penalty; forfeiture.

60-7A-6. Possession of liquor manufactured or shipped in violation of law; fourth degree felony; penalty; forfeiture.

60-7A-7. Manufacture of spirituous liquors; felony.

60-7A-8. Sales to wholesalers.

60-7A-9. Credit extension by wholesalers.

60-7A-10. Wholesalers prohibited from owning retailer's or dispenser's establishment.

60-7A-11. Offenses by retailers.

Sec. 60-7A-12. Offenses by dispensers, canopy licensees, res-

taurant licensees, governmental licensees or their lessees and clubs.

60-7A-13. Sales by clubs.

60-7A-14. Filling bottles; misrepresentation of alcoholic beverages.

60-7A-15. Public nuisance.

60-7A-16. Sale to intoxicated persons.

60-7A-17. Prostitution; loitering; promoting.

60-7A-18. Repealed.

60-7A-19. Commercial gambling on licensed premises.

60-7A-20. False complaints; misdemeanor.

60-7A-21. Possession or display of United States license.

60-7A-22. Drinking in public establishments; selling or serving alcoholic beverages other than in licensed establishments; selling or delivering alcoholic beverages from a drive-up window.

60-7A-23. Possession of wine as prima facie evidence.

60-7A-24. Obstruction of the administration of the Liquor Control Act; criminal penalty; sentencing.

60-7A-25. Criminal penalties.

60-7A-1. Hours and days of business.

A. Provided that nothing in this section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels, alcoholic beverages shall be sold, served and consumed on licensed premises only from 7:00 a.m. until 2:00 a.m. on the following day.

B. Except as provided in Subsection C of this section, alcoholic beverages may be sold by a dispenser or a retailer in unbroken packages, for consumption off the licensed premises and not for resale from 7:00 a.m. until midnight.

C. The governing body of a local option district that is a class B county with a population greater than seventy thousand and less than seventy-six thousand according to the most recent federal decennial census or that is a municipality located within a class B county with a population greater than seventy thousand and less than seventy-six thousand according to the most recent federal decennial census may pass an ordinance to place restrictions, in addition to those provided in this section, on the hours during which a dispenser or retailer may sell alcoholic beverages in unbroken packages for consumption off the licensed premises and not for resale. The ordinance may restrict sales between 7:00 a.m. and 10:00 a.m. and shall provide the hours between 7:00 a.m. and 10:00 a.m., if any, during which a dispenser or retailer may sell alcoholic beverages in unbroken packages for consumption off the licensed premises and not for resale.

History: Laws 1981, ch. 39, § 47; 1984, ch. 58, § 6; 1987, ch. 321, § 1; 1989, ch. 331, § 1; 1989, ch. 332, § 1; 1991, ch. 255, § 1; 1992, ch. 14, § 2; 1993, ch. 68, § 14; 1995, ch. 34, § 1; 1998 (1st S.S.), ch. 16, § 2; 1999, ch. 101, § 1; 2002, ch. 104, § 1; 2013, ch. 209, § 1; 2017, ch. 9, § 1; 2017, ch. 49, § 1; 2018, ch. 79, § 99; 2019, ch. 212, § 237; 2021, ch. 7, § 25.

Cross references. — For definitions of director and local option district, see 60-3A-3 NMSA 1978.

The 2021 amendment, effective July 1, 2021, clarified the hours that alcoholic beverages may be sold; in the section heading, after "Hours and days of business", deleted "Sunday sale; Christmas day sales for consumption off the licensed premises; elections"; in Subsection A, after "premises only" deleted "during the following hours and days", and deleted former Paragraphs A(1) through A(3); in Subsection B, after "resale", deleted "only on Mondays

through Saturdays", and after "midnight", deleted "except as provided in Subsections E and G of this section"; and deleted former Subsections D through K.

The 2019 amendment, effective April 3, 2019, provided additional criteria for having subsequent election on the question of whether a local option district shall adopt the local option provisions of the Liquor Control Act after a majority of voters in the local option district voted "no" on the question in a previous election, and revised the special election procedures on the question of allowing the sale service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day; in Subsection F, deleted former paragraph designation "(1)" and added new Paragraph F(1); in Subsection G, after "the governing body shall", added "pass a resolution calling for the question to be placed on a regular election ballot or", after "Christmas day", added

"to be placed before the voters in a special local election. The election may also be initiated by a resolution adopted by the governing body of the local option district without a petition from qualified electors having been submitted", after "The election", deleted "may" and added "shall", after "held", deleted "in conjunction with a regular election of the governing body or a regular local or special election held", and after "Local Election Act.", deleted "The election shall be called, conducted, counted and canvassed in substantially the same manner as provided for general elections in the county under the Election Code or for special elections in a municipality under the Local Election Act."; and in Subsection J, after "the governing body shall", deleted "adopt a resolution calling an election on the question" and added "pass a resolution calling for the question to be placed on a regular election ballot or adopt a proclamation calling for the question to be placed before the voters in a special election on the question. The election may also be initiated by a resolution adopted by the governing body of the local option district without a petition from qualified electors having been submitted", after "shall be held within", deleted "sixty" and added "ninety", after "the petition is verified", deleted "or it may be held in conjunction with a regular election of the governing body, if the regular election occurs within sixty days of the petition verification. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within a county or for special elections within a municipality", and after "Local Election Act", added "provided that the date of the election is not in conflict with the provisions of Section 1-24-1 NMSA 1978".

The 2018 amendment, effective July 1, 2018, provided that elections on the question of allowing the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day may be held in conjunction with a regular election or a special election held pursuant to the Local Election Act and shall be called, conducted, counted and canvassed in substantially the same manner as provided for general elections in the county under the Election Code or for special elections in a municipality under the Local Election Act, provided that elections on the question of continuing to allow sales of alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within a county or for special elections within a municipality pursuant to the Local Election Act, and made technical and conforming changes; in Subsection G, after "on Christmas day. The election", deleted "shall be held within sixty days after the date the petition is verified, or it", after "regular election of the governing body", deleted "if that election occurs within sixty days of such verification" and added "or a regular local or special election held pursuant to the Local Election Act", after "Election Code or for special", deleted "municipal", and after "under the", deleted "Municipal Election Code" and added "Local Election Act"; and in Subsection J, after "county or for special", deleted "municipal", and after "within a municipality", added "pursuant to the Local Election Act".

Temporary provisions. — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

2017 Multiple Amendments. — Laws 2017, ch. 49, § 1, effective June 16, 2017, provided for Sunday sales of alcoholic beverages when December 31 falls on a Sunday, from 11:00 a.m. until 2:00 a.m. of the following day; and in Subsection C, after "Sunday sales permit", added "and in those years when December 31 falls on a Sunday, from 11:00 a.m. until 2:00 a.m. of the following day".

Laws 2017, ch. 9, § 1, effective July 1, 2017, provided for certain local option districts to pass an ordinance to restrict the hours of sale of alcoholic beverages for consumption off a licensed premises, and provided dispensers and retailers the option of selling alcoholic beverages in for consumption off the licensed premises only on Mondays through Saturdays from 7:00 a.m. until midnight, except as provided by the restrictions of the local option district ordinance; in the catchline, after "Christmas day sales", deleted "Sunday"; in Subsection A, Paragraph A(2), after "Subsections", changed "D and F" to "E and G", and in Paragraph A(3), after "Subsections", changed "C and E" to "D and F"; in Subsection B, added "Except as provided in Subsection C of this section", after "alcoholic beverages", deleted "shall" and added "may", after "resale", added "only", and after "Subsections", changed "D and F" to "E and G"; and added a new Subsection C and redesignated the succeeding subsections accordingly.

The 2013 amendment, effective June 14, 2013, increased the hours of consumption of alcoholic beverages on Sunday; in Subsection A, in the introductory sentence, added "Provided that nothing in this section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels"; in Paragraph (2) of Subsection A, after "on", deleted "other weekdays" and added "Tuesdays through Saturdays"; in Paragraph (3) of Subsection A, after "Section 60-7A-2 NMSA 1978", deleted "provided, however, that nothing in this section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels"; in Subsection B, after "7:00 a.m. until", deleted "12:00 a.m. on the following day" and added "midnight"; in Subsection C, in the first sentence, after "premises on Sundays", deleted "from 12:00 noon until midnight and in those years when December 31 falls on a Sunday from 12:00 noon until 2:00 a.m. of the following day, except as otherwise provided in Subsection E of this section" and added the remainder of the sentence, added the second sentence, and in the third sentence, after "The", added "Sunday sales"; in Subsection G, after "Indian", added "nation" in two places and after "boundaries of the", added "Indian nation" in two places; and in Subsection H, in the first sentence, after "licensed premises on Sundays from" deleted "12:00" and after "Sunday, from", deleted "12:00".

The 2002 amendment, effective July 1, 2002, inserted "and Section 60-7A-2 NMSA 1978" in Subsection A(3); rewrote Subsection E, removing reference to the 1984 general election; in Subsection F, substituted "2002" for "1989" and inserted the proviso in the first sentence, and substituted "alcoholic beverages by the drink" for "beer and wine with meals" throughout the subsection; and added Subsection J.

The 1999 amendment, effective July 1, 1999, deleted Subsection D, which related to limitations on the sale of alcoholic beverages during voting hours on election days; redesignated the subsequent subsections accordingly; and updated subsection references.

The 1998 amendment deleted former Subsection G, relating to local elections on the question of drive-up liquor sales, redesignated the subsequent subsections accordingly, substituted "Sunday package sales" for "Sunday sales" in three places in Subsection J, and corrected internal references and made minor stylistic changes throughout the section. Laws 1998 (1st S.S.), ch. 16 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on August 2, 1998, 90 days after adjournment of the legislature.

The 1995 amendment, effective July 1, 1995, inserted "Sunday sales for consumption off the licensed premises" in the section heading, substituted "Subsection F" for "Subsection E" near the beginning of Subsection I, and added Subsections J and K.

The 1993 amendment, effective July 1, 1993, substituted "and consumed" for "delivered or consumed" in

the introductory paragraph of Subsection A; substituted "Subsections D, E and H" for "Subsections C and F" in Paragraph (2) of Subsection A; substituted "Subsections C and F" for "Subsections B and F" in Paragraph (3) of Subsection A; added current Subsection B; redesignated former Subsections B to H as Subsections C to I; substituted "Subsections F and I" and "Subsection F" for "Subsections E and H" and "Subsection C" in the first sentence of Subsection C; and inserted "or Subsection I of this section" in the last sentence of Subsection C.

The 1992 amendment, effective March 3, 1992, substituted "Christmas day sales; elections" for "election" in the section catchline; substituted "Subsections E and H" for "Subsection E" in the first sentence of Subsection B; inserted "that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978" in Subsection D and added "except as provided pursuant to Subsection G of this section" at the end of that subsection; deleted "of 1981" following "Liquor Control Act" in the third sentence of Subsection E; and added Subsections G and H.

The 1991 amendment, effective June 14, 1991, substituted "April 7, 1989" for "the effective date of this act" in Paragraph (1) in Subsection F and, in the last paragraph in Subsection F, substituted "1985 and 1986" for "1984 through 1986" and made a minor stylistic change.

ANNOTATIONS

Constitutionality. — Section 60-7A-1F NMSA 1978 is not prohibited special legislation; does not create a classification in violation of equal protection; and does not violate the constitution because the subject of the law is not set forth in its title. *Thompson v. McKinley Cnty.*, 1991-NMSC-076, 112 N.M. 425, 816 P.2d 494.

Duty of care. — Defendants, who sold alcohol to an Indian casino knowing that the casino planned to sell alcohol continuously over a twenty-four-hour period, did not owe a duty to plaintiffs, who were injured as a result of an

accident caused by a drunk driver who was served alcohol while intoxicated at the casino. *Chavez v. Desert Eagle Distrib. Co. of N.M.*, 2007-NMCA-018, 141 N.M. 116, 151 P.3d 77, overruled by *Rodriguez v. Del Sol Shopping Ctr. Assoc.*, 2014-NMSC-014.

Constitutionality. — This section is a proper exercise of legislative power and does not violate equal protection of the laws, under U.S. Const., amend. XIV, § 1 and N.M. Const., art. II, § 18, nor the prohibitions of the furtherance and establishment of religion clause of U.S. Const., amend. I and N.M. Const., art. II, § 11. *Pruey v. Dep't of ABC*, 1986-NMSC-018, 104 N.M. 10, 715 P.2d 458.

Sale of liquor on Sunday is grounds for revocation of dispenser's license. *Kearns v. Aragon*, 1959-NMSC-102, 65 N.M. 119, 333 P.2d 607 (decided under former law).

Election on Sunday sales mandatory. — Because of the express authorization for the continuation of Sunday sales as permitted under any former law until the question is reconsidered at the next general election, it is clear that the legislature fully intended that such reconsideration take place. The election on Sunday sales shall thus be a mandatory one. 1981 Op. Att'y Gen. No. 81-09.

A governmental licensee may engage in Sunday sales of alcoholic beverages. 1987 Op. Att'y Gen. No. 87-28.

Vineyard owners who have a "grower's permit" are not prohibited from selling wine by the bottle on Sunday in those local option districts that permit Sunday liquor sales. 1988 Op. Att'y Gen. No. 88-04.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 336.

Validity, construction, and effect of "Sunday closing" or "blue" laws - modern status, 10 A.L.R.4th 246.

Validity, under federal and state establishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays, 27 A.L.R.4th 1155.

48 C.J.S. Intoxicating Liquors § 256.

60-7A-2. Repealed.

Repeals. — Laws 2021, ch. 7, § 36 repealed 60-7A-2 NMSA 1978, as enacted by Laws 1981, ch. 39, § 48, relating to Sunday sales at racetracks and resorts, effective

July 1, 2021. For provisions of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

60-7A-3. Transportation into state without permit; exportation of alcoholic beverages without permit; importation for private use; reciprocal shipping; when unlawful.

A. Except as provided in Subsections E and F of this section, it is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a registered common carrier to knowingly deliver a shipment of alcoholic beverages from another state to a person in this state without receiving at the time of delivery a permit issued by the department covering the quantity and class of alcoholic beverages to be delivered and requiring the shipment be transported from the shipper designated in the permit to the designated consignee and from the designated point of origin to the destination designated in the permit.

B. Except as provided in Subsections D through F of this section, it is a violation of the Liquor Control Act for a person other than a registered common carrier to knowingly transport from another state and deliver in this state alcoholic beverages, unless the person has in the person's possession on entering New Mexico a permit from the department for the quantity and class of alcoholic beverages to be delivered, designating the name of the shipper and consignee and the point of origin and destination of the alcoholic beverages.

C. Except as provided in Subsections D and E of this section, it is a violation of the Liquor Control Act for a person to transport out of state alcoholic beverages on which the excise tax has not been paid, unless the shipment is accompanied by a permit issued by the department for the exact quantity and class transported, showing the consignee's federal and state license numbers and the point of origin and destination of the alcoholic beverages.

D. An individual not a minor may transport into or out of the state a reasonable amount of alcoholic beverages for the exclusive purpose of the individual's private use or consumption, and nothing in the Liquor Control Act limits or applies to such private actions.

E. An individual or licensee, except for a person holding a winery license, in a state that affords New Mexico licensees or individuals an equal reciprocal shipping privilege may ship for personal use and not for resale not more than two cases of wine, each case containing no more than nine liters, per month to an individual not a minor in this state. Delivery of a shipment pursuant to this subsection shall not be deemed to constitute a sale in this state and nothing in the Liquor Control Act limits or applies to such shipments. The shipping container of wine sent into or out of this state under this subsection shall be labeled clearly to indicate that the package cannot be delivered to a minor or to an intoxicated person.

F. The holder of a direct wine shipment permit issued pursuant to Section 60-6A-11.1 NMSA 1978 may ship no more than two nine-liter cases of wine per month to a person living in New Mexico who is twenty-one years of age or older for the person's personal consumption and not for resale.

G. As used in this section, "in this state" means within the exterior boundaries of the state.

History: Laws 1981, ch. 39, § 49; 1987, ch. 96, § 1; 2011, ch. 109, § 2.

The 2011 amendment, effective July 1, 2011, added Subsection F to permit the shipment of limited quantities of wine by permit holders to New Mexico residents.

60-7A-4. Sale, shipment and delivery unlawful.

A. It is unlawful for a person on the person's own behalf or as the agent of another person, except a licensed New Mexico wholesaler or manufacturer or the agent of either, to directly or indirectly sell or offer for sale for shipment into the state or ship into the state, except as provided in Section 60-7A-3 NMSA 1978, alcoholic beverages unless the person or the person's principals have secured a nonresident license as provided in Section 60-6A-7 NMSA 1978.

B. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] to deliver any alcoholic beverages transported into the state unless the delivery is made in accordance with Section 60-7A-3 NMSA 1978 or Section 4 [60-6A-37 NMSA 1978] of this 2021 act.

C. As used in this section, "into the state" means into the exterior boundaries of the state.

History: Laws 1981, ch. 39, § 50; 1987, ch. 96, § 2; 2021, ch. 7, § 26.

The 2021 amendment, effective July 1, 2021, required compliance with related provisions of the Liquor Control Act related to alcoholic beverage delivery permits; in Subsection A, after "Section", changed "60-7A-7" to "60-6A-7"; and in Subsection B, after "Section 60-7A-3 NMSA 1978", added "or Section 4 of this 2021 act".

ANNOTATIONS

Section does not prevent bringing liquor into state for personal consumption. *State v. Martinez*, 1944-NMSC-032, 48 N.M. 232, 149 P.2d 124.

Only licensed nonresident suppliers shall be permitted to import alcoholic beverages into New Mexico. Such importations may be made only to licensed New Mexico wholesalers or distilleries, and further, such importations shall be permitted only when approved by the division of liquor control (now director of alcohol and gaming division), 1957-58 Op. Att'y Gen. No. 57-198.

Wholesaler's license required by one storing liquor in warehouse. — If a person uses a warehouse in

New Mexico solely for the purpose of storing liquor, all of which is to be transported out of the state, such person must be licensed by the division of liquor control (now director of alcohol and gaming division), such person must obtain a wholesaler's license, 1961-62 Op. Att'y Gen. No. 62-110.

Wholesaler's license required to deliver alcoholic beverages to military reservations. — All deliveries of alcoholic beverages to post exchanges and open messes located on and within the confines of ceded military reservations in New Mexico must be made by licensed New Mexico wholesalers or distributors, 1957-58 Op. Att'y Gen. No. 57-198.

Transportation permit required to ship beer to military base. — Transportation of beer or other alcoholic liquors to a post exchange or NCO club or officers' club on a ceded military reservation requires a transportation permit, 1953-54 Op. Att'y Gen. No. 53-5825.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 123.
48 C.J.S. Intoxicating Liquors §§ 234, 238.

60-7A-4.1. Unlawful sale of alcoholic beverages; criminal penalty; forfeiture.

A. It is unlawful for any person to sell or attempt to sell alcoholic beverages at any place other than a licensed premises or as otherwise provided by the Liquor Control Act [60-3A-1 NMSA 1978].

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony.

C. Any conveyance used or intended to be used for the purpose of unlawful sale of alcoholic beverages or money which is the fruit or instrumentality of the crime is subject to forfeiture, and the provisions of the Forfeiture Act [31-27-1 NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

History: 1978 Comp., § 60-7A-4.1, enacted by Laws 1985, ch. 179, § 1; 1989, ch. 254, § 1; 1993, ch. 68, § 15; 2002, ch. 4, § 19.

The 2002 amendment, effective July 1, 2002, in Subsection C, after "crime", deleted "may be seized and upon conviction, in the discretion of the court, be forfeited and disposed of under the procedures set forth in

Section 30-31-35 NMSA 1978"; and added the last phrase beginning "is subject to forfeiture".

The 1993 amendment, effective July 1, 1993, inserted "criminal" in the catchline; inserted "upon conviction" and "and disposed of" in Subsection C; and deleted the former second sentence of Subsection C, pertaining to taking custody of forfeited property.

60-7A-4.2. Record of sales; administrative penalties.

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any person licensed pursuant to the provisions of that act and any employee, agent or lessee of that person to fail to maintain a record of sales of distilled spirits, wine and beer in quantities of twenty gallons or more to a single purchaser. The record shall contain the following information:

- (1) the date of the sale;
- (2) the name and address of the purchaser;
- (3) a description of the quantity and type of liquor sold; and
- (4) when a full case of distilled spirits is included in the sale, the serial number of the case.

B. Any person who violates the provisions of Subsection A of this section by failing to maintain a record of sales may be assessed an administrative penalty by the director not to exceed one thousand dollars (\$1,000).

C. Any person who violates the provisions of Subsection A of this section by failing to maintain, with the intent to defraud, a record of sales may be assessed an administrative penalty by the director not to exceed ten thousand dollars (\$10,000).

History: 1978 Comp., § 60-7A-4.2, enacted by Laws 1993, ch. 68, § 16.

60-7A-5. Manufacture, sale or possession for sale when not permitted by Liquor Control Act; criminal penalty; forfeiture.

A. It is unlawful for any person to manufacture for the purpose of sale, possess for the purpose of sale, offer for sale or sell any alcoholic beverages in the state except under the terms and conditions of the Liquor Control Act [60-3A-1 NMSA 1978].

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any conveyance used or intended to be used for the unlawful manufacture or sale of alcoholic beverages or any money that is the fruit or instrumentality of unlawful manufacture or sale of alcoholic beverages is subject to forfeiture, and the provisions of the Forfeiture Act [31-27-1 NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

History: Laws 1981, ch. 39, § 51; 1993, ch. 68, § 17; 2002, ch. 4, § 20.

The 2002 amendment, effective July 1, 2002, in Subsection C, after "beverages", deleted "may be seized and, upon conviction, in the discretion of the court, forfeited and disposed of pursuant to the provisions of Section 30-31-35 NMSA 1978"; and added the last phrase beginning "is subject to forfeiture".

The 1993 amendment, effective July 1, 1993, inserted "criminal" in the catchline; designated the former provision as Subsection A; and added Subsections B and C.

ANNOTATIONS

Illegal sales in dry area punishable. — Liquor code provisions making it illegal to sell liquor without a license are applicable in dry areas, since liquor could otherwise be sold within these areas without punishment. *State v. Bryant*, 1949-NMSC-026, 53 N.M. 229, 205 P.2d 213.

Violator entitled to trial by jury. — At the time of the adoption of the constitution and immediately prior thereto a person charged with selling alcoholic liquor without a license had the right to a trial by jury. *State v. Jackson*, 1967-NMCA-001, 78 N.M. 29, 427 P.2d 46.

The defendant charged with selling liquor without a license upon his demand should be accorded a trial by jury. *State v. Jackson*, 1967-NMCA-001, 78 N.M. 29, 427 P.2d 46.

Conviction not sustained where insufficient evidence in record regarding possession. — Where search revealed one pint of whiskey in defendant's bedroom and 11 fifths of whiskey in three brands found on the floor of the living room behind window drapes, and defendant's locality was within a local "dry" area and defendant had no license to sell liquor, this was insufficient evidence concerning defendant's possession for the purpose of sale and a conviction cannot be sustained. *State v. Easterwood*, 1961-NMSC-084, 68 N.M. 464, 362 P.2d 997.

Illegal sale of alcohol not nuisance. — Where there is no statute which declares the illegal sale of alcoholic beverages to be a nuisance, the legislature intended that something more than the sale of alcoholic liquor must be shown before such act could be restrained as a public nuisance. *State v. Davis*, 1958-NMSC-138, 65 N.M. 128, 333 P.2d 613.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 261.

Power to prohibit the possession of intoxicating liquor, irrespective of any intention to traffic therein, 2 A.L.R. 1085.

Constitutionality of statute prohibiting the manufacture of intoxicating liquor, 3 A.L.R. 285.

Test of intoxicating character of liquor, 4 A.L.R. 1187, 11 A.L.R. 1233, 19 A.L.R. 512, 36 A.L.R. 725, 91 A.L.R. 513.

Right of one charged with unlawful sale of intoxicating liquor to be informed before trial of name or identity of purchaser, 5 A.L.R. 409.

What amounts to attempt to manufacture intoxicating liquor within criminal law, 22 A.L.R. 225.

Forfeiture of property for unlawful use before trial of individual offender, 3 A.L.R. 2d 738.

Operation and effect, in dry territory, of general statute making sale or possession for sale of intoxicating liquor without a license an offense, 8 A.L.R. 2d 750.

State's power to regulate price of intoxicating liquors, 14 A.L.R. 2d 699.

What constitutes "sale" of liquor in violation of statute or ordinance, 89 A.L.R. 3d 551.

Validity, construction, and effect of statutes, ordinances or regulations prohibiting or regulating advertising of intoxicating liquors, 20 A.L.R. 4th 600.

48 C.J.S. Intoxicating Liquors §§ 250, 251.

60-7A-6. Possession of liquor manufactured or shipped in violation of law; fourth degree felony; penalty; forfeiture.

A. It is unlawful for any person to have in his possession with the intent to sell or resell any alcoholic beverages which to that person's knowledge have been manufactured or transported into this state in violation of the laws of this state.

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any conveyance used or intended to be used for the unlawful manufacture or transportation of alcoholic beverages or any money that is the fruit or instrumentality of unlawful manufacture or transportation of alcoholic beverages is subject to forfeiture, and the provisions of the Forfeiture Act [31-27-1 NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

History: Laws 1981, ch. 39, § 52; 1993, ch. 68, § 18; 2002, ch. 4, § 21.

The 2002 amendment, effective July 1, 2002, in Subsection C, after "beverages", deleted "may be seized and, upon conviction, in the discretion of the court, forfeited or disposed of pursuant to the provisions of Section 30-31-35 NMSA 1978"; and added the last phrase beginning "is subject to forfeiture".

The 1993 amendment, effective July 1, 1993, added "Fourth Degree Felony - Penalty - Forfeiture" at the end

of the catchline; designated the former undesignated provision as Subsection A; in Subsection A, substituted "unlawful" for "a violation of the Liquor Control Act" and inserted "with intent to sell or resell"; and added Subsections B and C.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 250.

60-7A-7. Manufacture of spirituous liquors; felony.

It is a felony for any person other than a licensed distiller or rectifier to manufacture any spirituous liquors in the state.

History: Laws 1981, ch. 39, § 53.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 248.

60-7A-8. Sales to wholesalers.

Unless he has a wholesaler's license, no New Mexico manufacturer shall sell or offer for sale any alcoholic beverages manufactured within this state to any person in New Mexico other than wholesalers licensed under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

History: Laws 1981, ch. 39, § 59.

ANNOTATIONS

Effect of one wholesaler dominating market. — Where one wholesaler in New Mexico so dominates a substantial number of retail dealers that such retail dealers are compelled to purchase substantially all of their distilled spirits from such wholesaler, the practice restrains

and prevents transactions in such distilled spirits between other wholesalers in the state and distillers and distributors elsewhere. *Levers v. Anderson*, 153 F.2d 1008 (10th Cir.), cert. denied, 328 U.S. 866, 66 S. Ct. 1376, 90 L. Ed. 1636 (1946).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 287.
48 C.J.S. Intoxicating Liquors § 129.

60-7A-9. Credit extension by wholesalers.

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any wholesaler to extend credit or to agree to extend credit for the sale of alcoholic beverages to any retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee for any period more than thirty calendar days from the date of the invoice required under the provisions of Section 60-8A-3 NMSA 1978. A violation of this section does not bar recovery by the wholesaler for the total indebtedness of the retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee.

History: Laws 1981, ch. 39, § 71; 1985, ch. 39, § 1.

ANNOTATIONS

Failure to collect invoices. — Where the liquor wholesaler did not promptly bring an action to recover the amount due on invoices that had remained unpaid for more than thirty days, but continued to deliver more liquor to the retailer without receiving immediate payment, the wholesaler extended credit to the retailer in violation of this section. *N.M. Beverage Co. v. Blything*, 1985-NMSC-039, 102 N.M. 533, 697 P.2d 952.

Credit extended during initial 30 days. — Credit sales made within the initial 30-day period before the retailer falls behind in payments on his account are not declared violations of this section, and 60-8A-5 NMSA 1978 does not bar a wholesaler from bringing an action to collect debts arising from such credit sales. *Pucci Distrib. Co. v. Stephens*, 1987-NMSC-075, 106 N.M. 228, 741 P.2d 831.

Time period for credit sales. — Since 15 days is a reasonable amount of time for a wholesale liquor distributor to determine what bills are past due from purchasers, any credit sales of liquor made to debtor by the wholesale liquor distributors within the first 45 days from the date of the first unpaid invoice are in conformance with the requirements of this section and are collectable, while any credit sales made after this forty-five day period demonstrate an implicit agreement to extend credit and, thus, are in violation of this section and uncollectable. *Sholer v. Bank of Albuquerque (In re Gallegos)*, 68 B.R. 584 (Bankr. D.N.M. 1986) (decided under former Section 60-10-8 NMSA 1978).

Conduct violative of section. — Where, from a review of the invoices submitted, it is obvious that wholesale liquor distributors were extending credit long after

the debtor had been in arrears in excess of 30 days, such implied agreement to extend credit is conduct prohibited by this section. *Sholer v. Bank of Albuquerque (In re Gallegos)*, 68 B.R. 584 (Bankr. D.N.M. 1986) (decided under former Section 60-10-8 NMSA 1978).

To violate this section, a liquor wholesaler must continue to make credit sales to a liquor retailer knowing at the time that the retailer is more than 30 calendar days behind in its credit payments to the wholesaler. *Gavin Maloof & Co. v. Sw. Distrib. Co.*, 1987-NMSC-103, 106 N.M. 413, 744 P.2d 541.

Wholesaler may collect despite violation. — The purpose of the 1985 amendment was to eliminate the forfeiture and allow the wholesaler to collect its debt even though there may be a violation of this section. *D & M, Inc. v. United N.M. Bank*, 114 B.R. 274 (Bankr. D.N.M. 1990).

Liquor wholesalers' superpriority liens created by former Section 60-6B-3E NMSA 1978 were prior to a bank's perfected security interest even if there was a violation of this section. *D & M, Inc. v. United N.M. Bank*, 114 B.R. 274 (Bankr. D.N.M. 1990).

C.O.D. sales allowable. — When a credit sale is not paid for within 30 days, a liquor wholesaler may cut off credit and continue to do business with the delinquent retailer on a C.O.D. basis, while the wholesaler attempts to collect the past due accounts. *Gavin Maloof & Co. v. Sw. Distrib. Co.*, 1987-NMSC-103, 106 N.M. 413, 744 P.2d 541.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 121.

Construction and effect of liquor regulation forbidding or restricting sales on credit or other than for cash, 17 A.L.R.3d 396.

48 C.J.S. Intoxicating Liquors § 243.

60-7A-10. Wholesalers prohibited from owning retailer's or dispenser's establishment.

A. Except as provided in Subsection B of this section, it is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a wholesaler, directly or indirectly or through an affiliate, to own, either in whole or in part, a business operated under a retailer's or dispenser's license.

B. This section shall not prevent a wholesaler from owning a dispenser's license directly or indirectly or through an affiliate and operating a business itself or through an affiliate or a lessee under a dispenser's license if:

(1) the wholesaler directly or indirectly operates or controls an interest in an establishment or complex maintaining a minimum of one hundred sleeping rooms and having a resident of New Mexico as a proprietor or manager and where, in consideration of payment, meals and lodging are regularly furnished to the general public; and

(2) the sale of alcoholic beverages under the dispenser's license is restricted to their consumption on the licensed premises.

History: Laws 1981, ch. 39, § 74; 1991, ch. 5, § 1.

The 1991 amendment, effective June 14, 1991, designated the former section as Subsection A, adding the exception at the beginning thereof, and added Subsection B.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 121.
48 C.J.S. Intoxicating Liquors § 197.

60-7A-11. Offenses by retailers.

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any retailer to:

- A. allow or permit any alcoholic beverages to be consumed on his licensed premises;
- B. maintain or keep in close proximity to the licensed premises any place for the consumption of alcoholic beverages purchased from him;
- C. sell any alcoholic beverages at any place other than his licensed premises;
- D. sell, possess for the purpose of sale or to have, possess or keep on his licensed premises alcoholic beverages not contained in the unopened, original package;
- E. buy or receive any alcoholic beverages from any person other than a duly licensed New Mexico wholesaler, or wine wholesaler for the purpose of or with the intent of reselling the alcoholic beverages; or
- F. directly, indirectly or through any subterfuge own, operate or control any interest in any wholesale liquor establishment or liquor manufacturing or wine bottling firm; provided, that this subsection shall not prevent a retailer from owning stock in any corporation which wholesales, manufactures or bottles alcoholic beverages when he owns the stock for investment purposes only.

History: Laws 1981, ch. 39, § 77; 1988, ch. 60, § 6.

ANNOTATIONS

Meaning of "package". — In keeping with the usages expressed by and implied from the term "package," such refers to the individual bottles, cans or crocks, as the case may be. 1957-58 Op. Att'y Gen. No. 57-243.

Delivery of purchase permitted. — When a sale takes place on the licensed premises of a retailer or dispenser, the beverage so purchased may be delivered by the retailer or independent carrier to any location designated by the purchaser. 1957-58 Op. Att'y Gen. No. 58-15.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 237.

60-7A-12. Offenses by dispensers, canopy licensees, restaurant licensees, governmental licensees or their lessees and clubs.

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any dispenser, canopy licensee, restaurant licensee, governmental licensee or its lessee or club to:

- A. receive any alcoholic beverages for the purpose or with the intent of reselling the alcoholic beverages from any person unless the person is duly licensed to sell alcoholic beverages to dispensers for resale;

B. sell; possess for the purpose of sale; or bottle bulk wine for sale other than by the drink for immediate consumption on its licensed premises;

C. directly, indirectly or through subterfuge, own, operate or control any interest in a wholesale liquor establishment or liquor manufacturing or wine bottling firm; provided that this section shall not prevent:

(1) a dispenser from owning an interest in a legal entity, directly or indirectly or through an affiliate, that wholesales alcoholic beverages and that operates or controls an interest in an establishment operating pursuant to the provisions of Subsection B of Section 60-7A-10 NMSA 1978; or

(2) a small brewer or winegrower licensed pursuant to the Domestic Winery, Small Brewery and Craft Distillery Act [60-6A-21 NMSA 1978] from holding an interest in a legal entity, directly or indirectly or through an affiliate, that holds a restaurant or a dispenser's license and a small brewer and winegrower limited wholesaler's license issued pursuant to the Liquor Control Act;

D. sell or possess for the purpose of sale any alcoholic beverages at any location or place except its licensed premises or the location permitted pursuant to the provisions of Section 60-6A-12 NMSA 1978;

E. employ or engage a person to sell, serve or dispense alcoholic beverages if the person has not received alcohol server training within thirty days of employment; or

F. employ or engage a person to sell, serve, deliver or dispense alcoholic beverages during a period when the server permit of that person is suspended or revoked.

History: Laws 1981, ch. 39, § 78; 1991, ch. 5, § 2; 1999, ch. 277, § 14; 2000, ch. 46, § 2; 2015, ch. 113, § 1; 2021, ch. 7, § 27.

The 2021 amendment, effective July 1, 2021, provided that it is a violation of the Liquor Control Act for any dispenser, canopy licensee, restaurant licensee, governmental licensee or its lessee or club to deliver alcoholic beverages during a period when the server permit of that person is suspended or revoked; and in Subsection F, after "serve", added "deliver".

The 2015 amendment, effective July 1, 2015, allowed small brewers and winegrowers licensed pursuant to the Domestic Winery, Small Brewery and Craft Distillery Act to hold a restaurant or dispenser's license and a small brewer and winegrower limited wholesaler's license; in Subsection A, after "reselling the", deleted "same" and added "alcoholic beverages", and after "from any person", deleted "other than one", and added "unless the person is"; in Subsection B, after "bottle", deleted "any"; and after "consumption on", deleted "his" and added "its"; in Subsection C, after "indirectly or through", deleted "any", after "interest in", deleted "any" and added "a", and after "shall not prevent", designated the remainder of Subsection C as Paragraph (1) of Subsection C; in Paragraph (1) of Subsection C, after "an interest in", deleted "any" and added "a", and after "NMSA 1978", added "or"; added Paragraph (2) of Subsection C; and in Subsection D, after "location or place except", deleted "his" and added "its".

The 2000 amendment, effective March 6, 2000, substituted "received alcohol server training within thirty days

of employment" for "been issued a server permit" in Subsection E.

The 1999 amendment, effective July 1, 1999, added Subsections E and F.

The 1991 amendment, effective June 14, 1991, rewrote Subsection C, which read "do any of the things which a retailer is prohibited from doing pursuant to Subsection F of Section 77 of the Liquor Control Act", and made a stylistic change in Subsection D.

ANNOTATIONS

Dram-shop statutes within province of legislature. — Whether legislation in the nature of the so-called dram-shop or civil damage statutes should be included as a part of New Mexico's liquor control acts is within the province of the legislature. *Hall v. Budagher*, 1966-NMSC-152, 76 N.M. 591, 417 P.2d 71, *rev'd on other grounds*, *Lopez v. Maez*, 1982-NMSC-103, 98 N.M. 625, 651 P.2d 1269.

Intent to sell required for offense. — When there is no intent or attempt to sell alcoholic liquors directly from an off-premises storage location, there is no offense. 1980 Op. Att'y Gen. No. 80-34.

Section does not prohibit storage of alcoholic liquors at unlicensed location. 1980 Op. Att'y Gen. No. 80-34.

"Possess for the purpose of sale" is intended to cover the situation where if there is no actual sale, there could be one. 1980 Op. Att'y Gen. No. 80-34.

60-7A-13. Sales by clubs.

A. Any club licensed pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] shall only have the right to sell alcoholic beverages by the drink and wine by the bottle for consumption on the premises.

B. Except as otherwise provided in this section, it is unlawful and grounds for suspension or revocation of its license for a club to:

(1) solicit by advertising or any other means public patronage of its alcoholic beverage facilities. In the event the club solicits public patronage of its other facilities, alcoholic beverages

shall not be sold, served or consumed on the premises while the other facilities are being used by or operated for the benefit of the general public, unless the alcoholic beverage facilities are separate from the other facilities and the general public is not permitted to enter any part of the facilities where alcoholic beverages are being sold, served or consumed; or

(2) serve, sell or permit the consumption of alcoholic beverages to persons other than members and their bona fide guests.

C. A club licensed pursuant to the provisions of the Liquor Control Act may allow its facilities, including its licensed premises, to be used, for activities other than its own, no more than four times in a calendar year for fundraising events held by other nonprofit organizations.

D. For the purposes of this section:

(1) "bona fide guest" means a person whose presence in the club is in response to a specific invitation by a member and for whom the member assumes responsibility; and

(2) "member" includes the adult spouse and the children of a member who pays membership dues or of a deceased member who paid membership dues or a member of an official auxiliary or subsidiary group of the club who has been issued a personal identification card in accordance with the rules and regulations of the club.

History: Laws 1981, ch. 39, § 79; 1987, ch. 13, § 1; 1999, ch. 114, § 1; 2021, ch. 7, § 28.

The 2021 amendment, effective July 1, 2021, increased the number of times a licensed club may allow its facilities, including its licensed premises, to be used for activities other than its own for fundraising events held by other nonprofit organizations; and in Subsection C, after "no more than", changed "two" to "four".

The 1999 amendment, effective April 1, 1999, in Subsection B, inserted "Except as otherwise provided in this

section" at the beginning, inserted Subsection C, and redesignated former Subsection C as Subsection D.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 129.
48 C.J.S. Intoxicating Liquors § 197.

60-7A-14. Filling bottles; misrepresentation of alcoholic beverages.

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any licensee to:

A. pour into any empty or partially empty bottle which contains or has contained any alcoholic beverage, alcoholic beverages of a different kind, class, brand, proof or age from that represented by the label, indicia, legend or descriptive matter on the bottle;

B. have, allow or permit upon the licensed premises any bottle containing alcoholic beverages of a different kind, class, brand, proof or age from that represented by the label, indicia, legend or descriptive matter appearing on the bottle;

C. expressly or impliedly misrepresent the kind, class, brand, proof or age of any alcoholic beverages served by the drink; or

D. pour into any empty or partially empty alcoholic beverage bottle, alcoholic beverages of the same kind, class, brand, proof or age as that represented by the label, indicia, legend and descriptive matter appearing on the bottle.

History: Laws 1981, ch. 39, § 80.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction, and effect of statutes, ordinances,

or regulations prohibiting or regulating advertising of intoxicating liquors, 20 A.L.R.4th 600.
48 C.J.S. Intoxicating Liquors § 201.

60-7A-15. Public nuisance.

A. Any premises used for the unlawful purpose of sale, manufacture, storage, possession or consumption of alcoholic beverages in violation of the Liquor Control Act [60-3A-1 NMSA 1978] is a public nuisance.

B. The district attorney in the county in which the nuisance exists is authorized to maintain an action to abate and temporarily and permanently enjoin the nuisance. The district attorney shall not be required to post bond.

C. Upon final judgment, the court shall enjoin the owner, lessee, tenant or occupant from maintaining or assisting in maintaining the nuisance, and shall order the premises to be closed until bond is furnished with sufficient surety in such sum as the court in its discretion shall by order and judgment provide, conditioned that the premises will not be maintained as a public nuisance.

History: Laws 1981, ch. 39, § 92.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 77, 441, 449.

Constitutionality of statute relating to injunctions against crime or abatement of nuisance arising from violation of liquor law, 49 A.L.R. 635.

Public dances or dance halls as nuisances, 44 A.L.R.2d 1381.

48 C.J.S. Intoxicating Liquors §§ 248, 405, 407, 408.

60-7A-16. Sale to intoxicated persons.

It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a person to sell, deliver or serve alcoholic beverages to or to procure or aid in the procurement of alcoholic beverages for an intoxicated person if the person selling, delivering, serving, procuring or aiding in procurement knows or has reason to know that the person is selling, delivering, serving, procuring or aiding in procurement of alcoholic beverages for a person who is intoxicated.

History: Laws 1981, ch. 39, § 93; 1993, ch. 68, § 19; 2021, ch. 7, § 29.

Cross references. — For tort liability for alcoholic liquor sales or service, see 41-11-1 NMSA 1978.

The 2021 amendment, effective July 1, 2021, prohibited the delivery of alcoholic beverages to intoxicated persons; and after "sell", added "deliver" and after each occurrence of "selling", added "delivering".

The 1993 amendment, effective July 1, 1993, substituted the language beginning "if the person selling" for "knowing that the person buying or receiving service of alcoholic beverages is intoxicated" at the end of the section.

ANNOTATIONS

This section must not be read to impose a duty on the tavernkeeper to the intoxicated patron. *Trujillo v. Trujillo*, 1986-NMCA-052, 104 N.M. 379, 721 P.2d 1310, cert. denied, 104 N.M. 289, 720 P.2d 708, *overruled by Mendoza v. Tamaya Enters.*, 2010-NMCA-74, 148 N.M. 534, 238 P.3d 903.

Liability for serving intoxicated person. — A person may be subject to liability if he or she breaches his or her duty by violating a statute or regulation, such as this section, which prohibits the selling or serving of alcoholic liquor to an intoxicated person, the breach of which is found to be the proximate cause of injuries to a third party. The imposition of this new liability will be applied prospectively. *Lopez v. Maez*, 1982-NMSC-103, 98 N.M. 625, 651 P.2d 1269.

Lessor of liquor license can be held liable under the terms of this section if a violation is proved. *Williams v. Ashbaugh*, 1986-NMCA-073, 120 N.M. 731, 906 P.2d 263, *aff'd*, 1987-NMSC-120, 106 N.M. 598, 747 P.2d 244.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 140.

Entrapment to comment offense against laws regulating sales of liquor, 55 A.L.R.2d 1322.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528, 62 A.L.R.4th 16.

Liability of persons furnishing intoxicating liquor for injury to or death of consumer, outside coverage of civil damage acts, 98 A.L.R.3d 1230.

Tavernkeeper's liability to patron for third person's assault, 43 A.L.R.4th 281.

Intoxicating liquors: employer's liability for furnishing or permitting liquor on social occasion, 51 A.L.R.4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver, 64 A.L.R.4th 272.

Social host's liability for death or injuries incurred by person to whom alcohol was served, 54 A.L.R.5th 313.

48 C.J.S. Intoxicating Liquors § 258.

60-7A-17. Prostitution; loitering; promoting.

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a licensee to knowingly:

- (1) allow prostitution on the licensed premises;
- (2) allow or permit the loitering of or solicitation by known prostitutes on the licensed premises; or
- (3) procure a prostitute for a patron, solicit a patron for a prostitute or solicit for a house of prostitution.

B. No municipality shall enact any ordinance or resolution inconsistent with the provisions of Subsection A of this section.

History: Laws 1981, ch. 39, § 94.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 203.

Validity, construction, and application of loitering statutes and ordinances, 72 A.L.R.5th 1.
48 C.J.S. Intoxicating Liquors § 257.

60-7A-18. Repealed.

Repeals. — Laws 2021, ch. 7, § 36 repealed 60-7A-18 NMSA 1978, as enacted by Laws 1981, ch. 39, § 95, relating to hours for public dances, effective July 1, 2021. For

provisions of former section, *see* the 2020 NMSA 1978 on *NMOneSource.com*.

60-7A-19. Commercial gambling on licensed premises.

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for a licensee to knowingly allow commercial gambling on the licensed premises.

B. In addition to any criminal penalties, a person who violates Subsection A of this section may have the person's license suspended or revoked or a fine imposed, or both, pursuant to the Liquor Control Act.

C. As used in this section:

(1) "commercial gambling" means:

- (a) participating in the earnings of or operating a gambling place;
- (b) receiving, recording or forwarding bets or offers to bet;
- (c) possessing facilities with the intent to receive, record or forward bets or offers to bet;
- (d) for gain, becoming a custodian of anything of value bet or offered to be bet;
- (e) conducting a lottery where both the consideration and the prize are money, or whoever with intent to conduct a lottery possesses facilities to do so; or
- (f) setting up for use for the purpose of gambling, or collecting the proceeds of, a gambling device or game; and

(2) "commercial gambling" does not mean:

- (a) activities authorized pursuant to the New Mexico Lottery Act [6-24-1 NMSA 1978];
- (b) the conduct of activities pursuant to Subsection B of Section 30-19-6 NMSA 1978 on the licensed premises of the holder of a club license; and
- (c) gaming authorized pursuant to the Gaming Control Act [60-2E-1 NMSA 1978] on the premises of a gaming operator licensee licensed pursuant to that act.

History: Laws 1981, ch. 39, § 96; 1997, ch. 190, § 68; 2011, ch. 176, § 1.

The 2011 amendment, effective June 17, 2011, permitted games of chance regulated by the New Mexico Bingo and Raffle Act to be conducted on the licensed premises of clubs.

The 1997 amendment, effective June 20, 1997, in Subsection C, redesignated former Paragraphs (1) to (6) as Subparagraphs (1)(a) to (f), added Paragraph (2), and made minor stylistic changes throughout.

60-7A-20. False complaints; misdemeanor.

Any person who lodges or intentionally causes or conspires to cause a complaint to be lodged knowing the complaint to be unfounded in actual fact, he [sic] shall, upon conviction thereof, be guilty of a misdemeanor.

History: Laws 1981, ch. 39, § 106.

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

60-7A-21. Possession or display of United States license.

Possession or display of a license from the United States to sell alcoholic beverages in New Mexico by a person not licensed under the Liquor Control Act [60-3A-1 NMSA 1978] to sell alcoholic

beverages or issuance of such a license by the district director of the internal revenue service shall be prima facie evidence that the person possessing or displaying the license, or to whom it was issued, is engaged in the business of selling alcoholic beverages, at the place for which it was issued or where it is displayed, in violation of the laws of New Mexico, and a certified copy of the records of the district director of the internal revenue service showing the issuance of the license or the payment of the tax therefor shall be admissible as evidence in any prosecution.

History: Laws 1981, ch. 39, § 107.

ANNOTATIONS

Defendant bears burden of proof. — Ownership of a license would cast upon the defendant in any case brought under the terms of this statute the burden of going forward

with the evidence to prove that the defendant did not fall within the provisions of the statute, namely, with operating a club for profit. 1955-56 Op. Att'y Gen. No. 55-6203.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 380.

48 C.J.S. Intoxicating Liquors § 110.

60-7A-22. Drinking in public establishments; selling or serving alcoholic beverages other than in licensed establishments; selling or delivering alcoholic beverages from a drive-up window.

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for any person to consume alcoholic beverages in any public establishment unless the establishment is licensed to sell and serve alcoholic beverages.

B. It is a violation of the Liquor Control Act for any person not a licensee to sell, serve or permit the consumption of alcoholic beverages in his public establishment or private club.

C. It is a violation of the Liquor Control Act for any licensee to sell or deliver alcoholic beverages from a drive-up window.

History: Laws 1981, ch. 39, § 108; 1991, ch. 257, § 4; 1998 (1st S.S.), ch. 16, § 3.

The 1998 amendment added "; selling or delivering alcoholic beverages from a drive-up window" to the end of the section heading, and rewrote former Subsection C, relating to grandfather provisions for drive-up liquor sales. Laws 1998 (1st S.S.), ch. 16 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on August 2, 1998, 90 days after adjournment of the legislature.

The 1991 amendment, effective June 14, 1991, deleted "during the ten-year period of economic adjustment" preceding "licensed premises" and made a minor stylistic change in Subsection C.

ANNOTATIONS

Knowingly permitting consumption constitutes corpus delicti of offense. — The corpus delicti of the offense charged is knowingly permitting the consumption of intoxicating liquor by appellant in his cafe without a license to do so. *State v. Carter*, 1954-NMSC-102, 58 N.M. 713, 275 P.2d 847.

Space for dancing and tables part of "establishment". — Space reserved for dancing and tables in

connection with a liquor dispensing unit is a part of the licensed "establishment." 1939-40 Op. Att'y Gen. No. 39-3180.

Serving liquor in bowling alleys permitted. — There is no prohibition against issuing an alcoholic beverage license to a bowling alley, thus permitting the serving of liquor on the premises. 1955-56 Op. Att'y Gen. No. 55-6278.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 307.

Construction and application of statute or ordinance respecting amusements on premises licensed for sale of intoxicating liquors, 4 A.L.R.2d 1216.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon, 98 A.L.R.3d 694.

Zoning or licensing regulation prohibiting or restricting location of billiard rooms and bowling alleys, 100 A.L.R.3d 252.

Validity and construction of statute or ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place, 39 A.L.R.4th 668.

48 C.J.S. Intoxicating Liquors § 253.

60-7A-23. Possession of wine as prima facie evidence.

In any proceedings under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978], the possession of more than one thousand two hundred liters of wine by any person who is not a public warehouseman, registered carrier or licensee shall be prima facie evidence that the person has manufactured the wine for the purpose of sale and possesses the wine for the purpose of sale in violation of the Liquor Control Act.

History: Laws 1981, ch. 39, § 109.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 408.

Power to prohibit the possession of intoxicating liquor, irrespective of any intention to traffic therein, 2 A.L.R. 1085.

Constitutionality, construction and effect of statute making possession of intoxicating liquor evidence of violation of law, 31 A.L.R. 1222.

Constitutionality of statute making unlawful possession of intoxicating liquor legally obtained, or providing for its confiscation, 37 A.L.R. 1386.

48 C.J.S. Intoxicating Liquors § 346.

60-7A-24. Obstruction of the administration of the Liquor Control Act; criminal penalty; sentencing.

A. Any person who forcibly or by bribe, threat or other corrupt practice obstructs, impedes or attempts to obstruct the administration of the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. Any licensee who forcibly or by bribe, threat or other corrupt practice obstructs, impedes or attempts to obstruct the administration of the provisions of the Liquor Control Act is guilty of violating the Liquor Control Act and shall be punished by fine, suspension or revocation under the procedures of the Liquor Control Act.

History: Laws 1981, ch. 39, § 110; 1993, ch. 68, § 20.

The 1993 amendment, effective July 1, 1993, rewrote the catchline; added "and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978" at the end of Subsection A; and made a minor stylistic change in Subsection A.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 165.

48 C.J.S. Intoxicating Liquors § 214.

60-7A-25. Criminal penalties.

A. A person who violates any provision of the Liquor Control Act [60-3A-1 NMSA 1978] or any rule or regulation promulgated by the department that is not declared by the Liquor Control Act to be a felony is guilty of a misdemeanor and, upon conviction thereof, the person shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. Any person convicted of a violation of the Liquor Control Act which is declared by the Liquor Control Act to be a fourth degree felony shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1981, ch. 39, § 111; 1991, ch. 119, § 1; 1993, ch. 68, § 21.

The 1993 amendment, effective July 1, 1993, inserted "Criminal" in the catchline; deleted "petty" preceding "misdemeanor" in Subsection A; deleted the former second sentence of Subsection A, pertaining to the penalty upon conviction of a corporation; and rewrote Subsection B.

The 1991 amendment, effective June 14, 1991, in the first sentence of Subsection A, substituted "A person who violates" for "A violation of", "is guilty of a petty misdemeanor" for "shall be a misdemeanor" and "sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978" for "punished by a fine of not more than three hundred dollars (\$300) or by confinement in jail not more than seven months or by both such fine and imprisonment"; and, in the second sentence of Subsection A, substituted "a violation of any provision of the Liquor Control Act [60-3A-1 NMSA 1978] it shall be a misdemeanor and the corporation shall be sentenced pursuant to the provisions of Section 31-20-1 NMSA 1978" for "such a violation, it shall be punished by a fine of not more than one thousand dollars (\$1,000)".

ANNOTATIONS

Illegal sales in dry area punishable. — Liquor code provisions making it illegal to sell liquor without a license are applicable in dry areas, since liquor could otherwise be

sold within these areas without punishment. *State v. Bryant*, 1949-NMSC-026, 53 N.M. 229, 205 P.2d 213.

Adult's custody no defense if not within statutory exemptions. — When minor was in custody of an adult who does not hold such legal relationship to the minor to come with exemptions of the statute, the fact of the adult's custody is no defense. *State v. Sifford*, 1947-NMSC-067, 51 N.M. 430, 187 P.2d 540.

Revocation of license of felon. — The director of the department of alcoholic beverage control (director of the alcohol and gaming division) has the duty, authority and power to revoke or cancel a liquor license owned by a person who is convicted of a felony. 1987 Op. Att'y Gen. No. 87-02.

When licensee not criminally liable for acts of his employees. — A liquor licensee would not be criminally liable for acts of agent or employee committed contrary to express instructions. 1959-60 Op. Att'y Gen. No. 59-24.

Law reviews. — For comment, "Intoxicating Liquors - Price Control - Fair Trade and Minimum Markups," see 4 Nat. Resources J. 189 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 431.

Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

48 C.J.S. Intoxicating Liquors § 286.

ARTICLE 7B

Regulation of Sales and Service to Minors

Sec.

60-7B-1. Selling or giving alcoholic beverages to minors; possession of alcoholic beverages by minors.

60-7B-1.1. Repealed.

60-7B-2. Documentary evidence of age and identity.

60-7B-3, 60-7B-4. Repealed.

60-7B-5. Refusal to sell or serve alcoholic beverages to person unable to produce identity card.

60-7B-6. Demanding and seeing identity card before furnishing alcoholic beverages.

60-7B-7. Presenting false evidence of age or identity.

Sec.

60-7B-8. Delivery of identity card to minor for use in obtaining alcoholic beverages.

60-7B-9. Penalty.

60-7B-10. Minors in licensed premises; regulations.

60-7B-11. Employment of minors.

60-7B-12. Beer kegs; labeling; notice.

60-7B-13. Stocking alcoholic beverages in wet bars in hotel guest rooms prohibited; room service.

60-7B-14. Substance-related poisoning prevention; limited immunity.

60-7B-1. Selling or giving alcoholic beverages to minors; possession of alcoholic beverages by minors.

A. It is a violation of the Liquor Control Act [Chapter 60, Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A NMSA 1978] for a person, including a person licensed pursuant to the provisions of the Liquor Control Act, or an employee, agent or lessee of that person, if the person knows or has reason to know that the person is violating the provisions of this section, to:

(1) sell, serve or give alcoholic beverages to a minor or permit a minor to consume alcoholic beverages on the licensed premises;

(2) buy alcoholic beverages for or procure the sale or service of alcoholic beverages to a minor;

(3) deliver alcoholic beverages to a minor; or

(4) aid or assist a minor to buy, procure or be served with alcoholic beverages.

B. It is not a violation of the Liquor Control Act, as provided in Subsection A or C of this section, when:

(1) a parent, legal guardian or adult spouse of a minor serves alcoholic beverages to that minor on real property, other than licensed premises, under the control of the parent, legal guardian or adult spouse; or

(2) alcoholic beverages are used in the practice of religious beliefs.

C. It is a violation of the Liquor Control Act for a minor to buy, attempt to buy, receive, possess or permit the minor's self to be served with alcoholic beverages.

D. When a person other than a minor procures another person to sell, serve or deliver alcoholic beverages to a minor by actual or constructive misrepresentation of facts or concealment of facts calculated to cause the person selling, serving or delivering the alcoholic beverages to the minor to believe that the minor is legally entitled to be sold, served or delivered alcoholic beverages and actually deceives that person by that misrepresentation or concealment, then the procurer and not the person deceived shall have violated the provisions of the Liquor Control Act.

E. As used in the Liquor Control Act, "minor" means a person under twenty-one years of age.

F. In addition to the penalties provided in Section 60-6C-1 NMSA 1978, a violation of the provisions of Subsection A of this section is:

(1) a fourth degree felony for an offender, other than a server certified pursuant to Section 60-6E-7 NMSA 1978, who shall be sentenced pursuant to Section 31-18-15 NMSA 1978;

(2) a misdemeanor for a first violation if the offender is a server, certified pursuant to Section 60-6E-7 NMSA 1978, who shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; or

(3) a fourth degree felony for a second or subsequent violation if the offender is a server, certified pursuant to Section 60-6E-7 NMSA 1978, who shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. A violation of the provisions of Subsection C of this section is a misdemeanor and the offender shall be punished as follows:

(1) for a first violation, the offender shall be:

- (a) fined an amount not more than one thousand dollars (\$1,000); and
- (b) ordered by the sentencing court to perform thirty hours of community service related to reducing the incidence of driving while under the influence of intoxicating liquor;
- (2) for a second violation, the offender shall:
 - (a) be fined an amount not more than one thousand dollars (\$1,000);
 - (b) be ordered by the sentencing court to perform forty hours of community service related to reducing the incidence of driving while under the influence of intoxicating liquor; and
 - (c) have the offender's driver's license suspended for a period of ninety days. If the minor is too young to possess a driver's license at the time of the violation, then ninety days shall be added to the date the offender would otherwise become eligible to obtain a driver's license; and
- (3) for a third or subsequent violation, the offender shall:
 - (a) be fined an amount not more than one thousand dollars (\$1,000);
 - (b) be ordered by the sentencing court to perform sixty hours of community service related to reducing the incidence of driving while under the influence of intoxicating liquor; and
 - (c) have the offender's driver's license suspended for a period of two years or until the offender reaches twenty-one years of age, whichever period of time is greater.

H. A violation of the provisions of Subsection D of this section is a fourth degree felony and the offender shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1978 Comp., § 60-7B-1, enacted by Laws 1993, ch. 68, § 22; 1998, ch. 80, § 1; 1998, ch. 101, § 1; 2004, ch. 43, § 1; 2013, ch. 213, § 3.

Cross references. — For age of majority, see 28-6-1 NMSA 1978.

For tort liability for alcoholic liquor sales or service, see 41-11-1 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 68, § 22 repealed former 60-7B-1 NMSA 1978, as enacted by Laws 1981, ch. 39, § 81, and enacted a new section, effective July 1, 1993.

The 2013 amendment, effective June 14, 2013, reduced the penalty for serving alcoholic beverages to minors; changed the knowledge requirement for providing alcohol to minors; in Subsection F, in the introductory sentence, after "of this section is", deleted "a fourth degree felony and the offender"; added Paragraphs (1) and (2) of Subsection F; and in Paragraph (3) of Subsection F, at the beginning of the sentence, added "a fourth degree felony for a second or subsequent violation if the offender is a server; certified pursuant to Section 60-6E-7 NMSA 1978".

The 2004 amendments, effective July 1, 2004, amended Subsection B to include "adult spouse" in Paragraph (1) and to add Paragraph (2), amended Subsection D to clarify the language, and amended Subsections F and G to delete the different penalties for the first, second and third or subsequent offense and amended Subsection H to provide that a violation of Subsection A or D is a fourth degree felony.

1998 amendments. — Laws 1998, ch. 80, § 1, amending this section, effective July 1, 1998, by substituting "a" for "any" and deleting "any" throughout the section, inserting "including a person" preceding "licensed pursuant", and substituting "an" for "any" in Subsection A; adding Subsection B and redesignating the remaining subsections accordingly; substituting "other than" for "except" and "another" for "any other" in Subsection D; and substituting "accept" for "accepts" in Paragraph F(1), and making minor stylistic changes throughout the section, was approved March 9, 1998. However, Laws 1998, ch. 101, § 1, also amending this section, effective July 1, 1998, by substituting "a" for "any" and deleting "any" throughout the section, inserting "including a person" preceding "licensed pursuant", and substituting "an" for "any" in Subsection A; adding Subsection B and redesignating the remaining subsections accordingly; substituting "other than" for "except" and "another" for "any other" in Subsection D; deleting former Subsection E, relating to violation of this section by a minor; adding Subsections F, G and H; and making minor

stylistic changes throughout the section, but not giving effect to the first 1998 amendment, was approved March 10, 1998. This section is set out as amended by Laws 1998, ch. 101, § 1. See 12-1-8 NMSA 1978.

ANNOTATIONS

Mens rea for offense of giving alcohol to a minor.

— With the adoption of the knowledge provision set forth in § 60-7B-1 NMSA 1978, the legislature intended the phrase "knows or has reason to know" to refer to defendant's knowledge of the facts constituting the offense, specifically the alcohol recipient's status as a minor. *State v. Muller*, 2022-NMCA-024, cert. denied.

Criminal conviction is not a condition precedent to the imposition of a fine. — The criminal conviction of a server under Section 60-7B-1 NMSA 1978 is not a condition precedent to the imposition of a civil fine on the licensee pursuant to Subsection A of Section 60-6C-1NMSA 1978. *Town & Country Food Stores, Inc. v. N. M. Regulation & Licensing Dep't*, 2012-NMCA-046, 277 P.3d 490.

Where, in a sting operation, the licensee's employee sold beer to a minor; a hearing officer found that the licensee violated Section 60-7B-1 NMSA 1978 and imposed a fine on the licensee; and the district attorney dismissed charges filed against the employee after the employee completed a pre-prosecution program, the criminal conviction of the employee was not a condition precedent to the imposition of the fine under Subsection A of Section 60-6C-1 NMSA 1978. *Town & Country Food Stores, Inc. v. N. M. Regulation & Licensing Dep't*, 2012-NMCA-046, 277 P.3d 490.

Section forbids all deliveries to minors. — This section forbids any delivery of alcoholic liquors to a minor not accompanied by parent, guardian or person "in loco parentis," even where person so delivering alcoholic liquors knows that same are intended for use by an adult. *State v. Cummings*, 1957-NMSC-105, 63 N.M. 337, 319 P.2d 946.

Delivery made in person or through agent. — The accused, to be guilty of delivering liquor to a minor, need not hand it over in person, but would be guilty if the handing over was done by an agent or servant, at the express direction of the principal or master. *State v. Cummings*, 1957-NMSC-105, 63 N.M. 337, 319 P.2d 946.

Liability for serving minor. — A person may be subject to liability if he or she breaches his or her duty by violating a statute or regulation, such as this section, which prohibits the selling or serving of alcoholic liquor to a minor, the breach of which is found to be the proximate

cause of injuries to a third party. *MRC Props., Inc. v. Gries*, 1982-NMSC-124, 98 N.M. 710, 652 P.2d 732.

It shall not be negligence per se to violate this section. *Trujillo v. Trujillo*, 1986-NMCA-052, 104 N.M. 379, 721 P.2d 1310, cert. denied, 104 N.M. 289, 720 P.2d 708, overruled by *Mendoza v. Tamaya Enters.*, 2010-NMCA-74, 148 N.M. 534, 238 P.3d 903.

Section applies to unlicensed persons as well as licensed dealers. *State v. Cummings*, 1957-NMSC-105, 63 N.M. 337, 319 P.2d 946.

Contents of information charging defendant with offense. — Information charging that defendant delivered alcoholic liquor to a minor, contrary to provision of this section, was not fatally defective in failing to set out that such minor was not accompanied by a parent, guardian or other person having custody. *State v. Cummings*, 1957-NMSC-105, 63 N.M. 337, 319 P.2d 946.

Charge of defendant in the information with contributing to delinquency of a minor by selling alcoholic liquors to him was adequate. *State v. Sena*, 1950-NMSC-027, 54 N.M. 213, 219 P.2d 287.

Probable cause for arrest for possession of alcohol. — Probable cause to believe that a child wrongfully possessed or consumed alcohol sufficient to justify an arrest and warrantless search was not shown by the fact that the child's friend smelled of alcohol, or by the child's admission that he consumed a beer outside the officer's presence. *State v. Tywayne H.*, 1997-NMCA-015, 123 N.M. 42, 933 P.2d 251, cert. denied, 123 N.M. 83, 934 P.2d 277.

Right to jury trial is privilege which may be waived, and if a right to jury trial existed in this case, where appellant was charged with giving alcoholic beverages to minors, appellant, by proceeding without demand or objection to trial before the court without a jury, waived the privilege granted by the constitution. *State v. Marrujo*, 1968-NMSC-118, 79 N.M. 363, 443 P.2d 856.

Conviction may be based upon uncorroborated evidence of minor. *State v. Hunter*, 1933-NMSC-069, 37 N.M. 382, 24 P.2d 251.

Adult's custody no defense if not within statutory exemptions. — Where minor was in custody of an adult who does not hold such legal relationship to the minor as to come within exemptions of the statute, the fact of adult's custody is no defense. *State v. Sifford*, 1947-NMSC-067, 51 N.M. 430, 187 P.2d 540.

Breach of section as tort liability. — An allegation of a breach of the duty under this section which caused

injury to plaintiffs states a claim for relief. *Walker v. Key*, 1984-NMCA-067, 101 N.M. 631, 686 P.2d 973 (decided under former Section 60-7B-1.1 NMSA 1978).

Minor cannot legally bring alcoholic beverages into state. — A minor, whether or not accompanied by spouse, guardian or parents, cannot legally bring alcoholic beverages into the state of New Mexico. 1961-62 Op. Att'y Gen. No. 62-21.

Sale of liquor to minor wife accompanied by adult spouse authorized. — Liquor may be sold to a minor wife when she is accompanied by her adult spouse. 1943-44 Op. Att'y Gen. No. 44-4462.

Minor police officer may receive or possess liquor. — This section does not prohibit a police officer who is under the age of 21 years and in the lawful performance of his duties from receiving or possessing liquor. 1975 Op. Att'y Gen. No. 75-59.

Law reviews. — For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M. L. Rev. 331 (1976).

For note, "Children's Law: Investigating Detention of Juveniles in New Mexico: Providing Greater Protection than Miranda Rights for Children in the Area of Police Questioning — *State of New Mexico v. Javier M.*," see 32 N.M. L. Rev. 353 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 141.

Criminal offense of selling liquor to minor (or person under specified age) as affected by ignorance or mistake regarding purchaser's age, 12 A.L.R.3d 991.

Serving liquor to minor in home as unlawful sale or gift, 14 A.L.R.3d 1186.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor, 89 A.L.R.3d 1256.

Intoxicating liquors: employer's liability for furnishing or permitting liquor on social occasion, 51 A.L.R.4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Tort liability of college or university for injury suffered by student as a result of own or fellow student's intoxication, 62 A.L.R.4th 81.

Social host's liability for death or injuries incurred by person to whom alcohol was served, 54 A.L.R.5th 313.

48 C.J.S. Intoxicating Liquors § 259.

60-7B-1.1. Repealed.

Repeals. — Laws 1981, ch. 39, § 128 repealed 60-7B-1.1 NMSA 1978, as enacted by Laws 1939, ch. 236, § 1202 and as amended by Laws 1975, ch. 152, § 1, relating to selling or giving liquor to minors, effective July 1, 1981.

Compiler's notes. — This section was enacted by Laws 1939, ch. 236, § 1202 and was repealed by Laws 1981, ch.

39, § 128. It was subsequently amended by Laws 1981, ch. 252, § 1. An amended act alters, modifies or adds to a prior law. Since there is no prior law to be amended, this section has not been published. The subject matter of this section is fully covered by 60-7B-1 NMSA 1978 which was repealed and reenacted by Laws 1993, ch. 68, § 22.

60-7B-2. Documentary evidence of age and identity.

A. Evidence of the age and identity of the person may be shown by any document that contains a picture of the person issued by a federal, state, county or municipal government, or subdivision or agency thereof, including but not limited to a motor vehicle operator's license or an identification card issued to a member of the armed forces.

B. An identity document is valid for the purposes of the Liquor Control Act [60-3A-1 NMSA 1978] even if it has expired.

C. Except for deliveries of alcoholic beverages pursuant to Section 4 [60-6A-37 NMSA 1978] of this 2021 act, it is unnecessary to ask for an identity document if the person clearly looks older than thirty-five years of age.

History: Laws 1981, ch. 39, § 82; 1985, ch. 184, § 1; 2021, ch. 7, § 30.

The 2021 amendment, effective July 1, 2021, provided that an identity document is valid for the purpose of the Liquor Control Act even if it has expired, and provided

that, except for deliveries of alcoholic beverages, it is unnecessary to ask for an identity document if the person purchasing alcoholic beverages clearly looks older than thirty-five years of age; and added Subsections B and C.

2021, ch. 7, § 30, 2021 N.M. Stat. § 60-7B-3, 60-7B-4

60-7B-3, 60-7B-4. Repealed.

Repeals. — Laws 1985, ch. 184, § 5 repealed 60-7B-3 and 60-7B-4 NMSA 1978, as enacted by Laws 1981, ch.

39, §§ 83 and 84, relating to department-issued identity cards, effective June 14, 1985.

60-7B-5. Refusal to sell or serve alcoholic beverages to person unable to produce identity card.

A. A person licensed pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or any employee, agent or lessee of that person may refuse to deliver, sell or serve alcoholic beverages to any person who is unable to produce an identity card as evidence that the person is twenty-one years of age or over.

B. An identity document is valid for the purposes of the Liquor Control Act even if it has expired.

C. Except for deliveries of alcoholic beverages pursuant to Section 4 [60-6A-37 NMSA 1978] of this 2021 act, it is unnecessary to ask for an identity document if the person clearly looks older than thirty-five years of age.

History: Laws 1981, ch. 39, § 85; 1985, ch. 184, § 2; 1993, ch. 68, § 23; 2021, ch. 7, § 31.

The 2021 amendment, effective July 1, 2021, provided that a person licensed pursuant to the provisions of the Liquor Control Act has the discretion to refuse to deliver, sell or serve alcoholic beverages to any person who is unable to produce an identity card as evidence that the person is twenty-one years of age, provided that an identity document is valid for the purpose of the Liquor Control Act even if it has expired, and provided that, except for deliveries of alcoholic beverages, it is unnecessary to ask for

an identity document if the person purchasing alcoholic beverages clearly looks older than thirty-five years of age; in Subsection A, after "that person", changed "shall" to "may", and after "refuse to", added "deliver"; and added Subsections B and C.

The 1993 amendment, effective July 1, 1993, substituted "Any person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person shall" for "Any retailer, dispenser, restaurant licensee, club licensee, canopy licensee or governmental licensee and its lessee may".

60-7B-6. Demanding and seeing identity card before furnishing alcoholic beverages.

In any criminal prosecution or in any proceedings for the suspension or revocation of a license or alcoholic beverage delivery permit or in any proceeding for violation of a municipal or county ordinance prohibiting the gift, sale or service of alcoholic beverages to minors, proof that the accused licensee or alcoholic beverage delivery permittee in good faith demanded and was shown an identity card as evidence the person is twenty-one years of age or older before furnishing any alcoholic beverages to a minor shall be a defense to the prosecution or proceedings.

History: Laws 1981, ch. 39, § 86; 1985, ch. 184, § 3; 2021, ch. 7, § 32.

The 2021 amendment, effective July 1, 2021, included alcoholic beverage delivery permits and alcoholic beverage delivery permittees within the provisions of this section; and after "suspension or revocation of a license", added "or alcoholic beverage delivery permit", after "accused licensee", added "or alcohol beverage delivery permittee", and after "identity card", added "as evidence the person is twenty-one years of age or older".

ANNOTATIONS

The good faith defense is not limited to identification that is fraudulent. *ERICA, Inc. v. N.M. Regulation*

& Licensing Dep't, 2008-NMCA-065, 144 N.M. 132, 184 P.3d 444.

Driver's license lacked legend that licensee is under twenty-one. — The good faith defense is not precluded as a matter of law where a liquor store employee relies on the absence of the printed legend on the driver's license of a minor indicating that the licensee is under twenty-one, which is required by Section 66-5-47 NMSA 1978, to determine whether the licensee is a minor, even though the birth date of the licensee on the driver's license shows that the licensee is under twenty-one. *ERICA, Inc. v. N.M. Regulation & Licensing Dep't*, 2008-NMCA-065, 144 N.M. 132, 184 P.3d 444.

60-7B-7. Presenting false evidence of age or identity.

A minor who presents to any person licensed pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or any employee, agent or lessee of that person any written, printed or photostatic evidence of age or identity that is false, for the purpose of procuring or attempting to procure any alcoholic beverages, is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1981, ch. 39, § 87; 1985, ch. 184, § 4; 1991, ch. 119, § 2; 1993, ch. 68, § 24.

The 1993 amendment, effective July 1, 1993, substituted "person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person" for "licensee".

The 1991 amendment, effective June 14, 1991, substituted "that" for "which" and "petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978" for "misdemeanor".

60-7B-8. Delivery of identity card to minor for use in obtaining alcoholic beverages.

Any person who gives, loans, sells or delivers an identity card to a minor with the knowledge that the minor intends to use the identity card for the purpose of procuring or attempting to procure any alcoholic beverages is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1981, ch. 39, § 88; 1991, ch. 119, § 3.

The 1991 amendment, effective June 14, 1991, substituted "petty misdemeanor and shall be sentenced

pursuant to the provisions of Section 31-19-1 NMSA 1978" for "misdemeanor".

60-7B-9. Penalty.

Unless otherwise provided for in Article 7B of Chapter 60, any violation of Sections 60-7B-1 through 60-7B-8 NMSA 1978 by a minor is a petty misdemeanor, and the minor shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1981, ch. 39, § 89; 1991, ch. 119, § 4.

The 1991 amendment, effective June 14, 1991, substituted the present provisions for the former provisions, which read "Any violations of Sections 81 through 88 of the Liquor Control Act by a minor is punishable upon

conviction by a fine of not less than one hundred dollars (\$100), no part of which shall be suspended or by imprisonment in the county jail for not more than six months, or by both fine and imprisonment".

60-7B-10. Minors in licensed premises; regulations.

A. Any person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person who permits a minor to enter and remain in any area of a licensed premises that is prohibited to the use of minors is guilty of a violation of the Liquor Control Act [60-3A-1 NMSA 1978].

B. A minor shall not enter or attempt to enter any area of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors, except as authorized by regulation or as necessitated by an emergency. A person who violates the provisions of this subsection is guilty of a petty misdemeanor and shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. The director of the alcohol and gaming division of the regulation and licensing department shall adopt regulations classifying the types of licensed premises or areas of licensed premises where minors may be present. The director shall require that signs issued by the division be posted by licensees to inform the public, including minors, of the areas in licensed premises that are open to minors. The regulations may allow minors in those areas of licensed premises where:

(1) the consumption of alcoholic beverages is the primary activity, when a minor is accompanied by a parent, adult spouse or legal guardian;

(2) there is no consumption of alcoholic beverages; or

(3) the minor is at least eighteen years of age and licensed under the New Mexico Commercial Driver's License Act [66-5-52 through 66-5-72 NMSA 1978] and is making a delivery of packaged alcoholic beverages to a holder of a dispenser's, retailer's, restaurant, club, small brewer, winegrower, craft distiller, manufacturer's or rectifier or any other license that allows for the purchase and delivery of alcoholic beverages.

History: Laws 1981, ch. 39, § 90; 1991, ch. 119, § 5; 1993, ch. 68, § 25; 1994, ch. 50, § 1; 2019, ch. 103, § 1.

The 2019 amendment, effective July 1, 2019, allowed minors who are licensed under the New Mexico commercial driver's license act to deliver packaged alcoholic beverages; and added Paragraph C(3).

The 1994 amendment, effective May 18, 1994, added "regulations" at the end of the section heading; substituted "any area of a licensed premises that is prohibited to the use of minors" for "the licensed premises without lawful business" in Subsection A; in Subsection B, added the first sentence and substituted "A person who violates the provisions of this subsection" for "Any minor who enters and remains in the licensed premises without lawful business" in the second sentence; and rewrote Subsection C, which formerly defined "lawful business".

The 1993 amendment, effective July 1, 1993, substituted "person licensed pursuant to the provisions of the

Liquor Control Act or any employee, agent or lessee of that person" for "retailer, dispenser, restaurant licensee, club licensee, canopy licensee or governmental licensee or its lessee" in Subsection A and added Subsection C.

The 1991 amendment, effective June 14, 1991, in Subsection B, substituted "petty misdemeanor and shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978" for "misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100), no part of which shall be suspended".

ANNOTATIONS

Minor police officer permitted in licensed premises. — This section does not prohibit liquor licensees or their agents from permitting a police officer who is under 21 years of age and in the lawful performance of his duties to be in attendance in the licensed premises of a liquor establishment. 1975 Op. Att'y Gen. No. 75-59.

60-7B-11. Employment of minors.

A. Except as provided in Subsection B or C of this section, it is a violation of the Liquor Control Act for any person licensed pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] or for any employee, agent or lessee of that person knowingly to employ or use the service of any minor in the sale and service of alcoholic beverages.

B. A person holding a dispenser's, restaurant or club license may employ persons eighteen years of age or older to sell or serve alcoholic beverages in an establishment that is held out to the public as a place where meals are prepared and served and the primary source of revenue is food, and where the sale or consumption of alcoholic beverages is not the primary activity, except that a person under twenty-one years of age shall not be employed as a bartender or deliverer.

C. A person holding a wholesaler's license may employ persons eighteen years of age or older who are licensed pursuant to the New Mexico Commercial Driver's License Act [66-5-52 to 66-5-72 NMSA 1978] to engage in activities customary to warehouse operations and to handle and deliver alcoholic beverages to licensees holding a dispenser's, retailer's, restaurant, club, small brewer, winegrower, craft distiller, manufacturer's, rectifier or any other license that allows for the purchase and delivery of alcoholic beverages by a licensed wholesaler, as long as the minor delivers sealed, unbroken packages, including containers such as bottles, cans and kegs. A person under the age of twenty-one shall not be allowed to sample alcoholic beverages to accounts.

History: Laws 1981, ch. 39, § 91; 1993, ch. 68, § 26; 1999, ch. 119, § 1; 2019, ch. 103, § 2; 2021, ch. 7, § 33.

The 2021 amendment, effective July 1, 2021, lowered the age to eighteen for restaurant employees permitted to sell or serve alcoholic beverages, and prohibited the employment of someone under twenty-one years of age to deliver alcoholic beverages; and in Subsection B, after "employ persons", changed "nineteen" to "eighteen", and after "bartender", added "or deliverer".

The 2019 amendment, effective July 1, 2019, allowed wholesaler's licensees to employ minors who are licensed under the New Mexico commercial driver's license act to engage in activities customary to warehouse operations

and to handle and deliver packaged alcoholic beverages, and prohibited minors from being allowed to sample alcoholic beverages; and added Subsection C.

The 1999 amendment, effective June 18, 1999, in Subsection A, added "Except as provided in Subsection B of this section" and substituted "is" for "shall be," and added Subsection B.

The 1993 amendment, effective July 1, 1993, substituted "person licensed pursuant to the provisions of the Liquor Control Act or for any employee, agent or lessee of that person" for "retailer, dispenser, restaurant licensee, club licensee, canopy licensee or governmental licensee or its lessee".

ANNOTATIONS

Minor over 16 years of age, may be employed as entertainer in a night club provided he is accompanied by an adult who is his parent, guardian, spouse or an adult

person in whose custody he has been committed at the time by some court. 1955-56 Op. Att'y Gen. No. 55-6105.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 308.

48 C.J.S. Intoxicating Liquors § 231.

60-7B-12. Beer kegs; labeling; notice.

A. Every keg which is sold by a retailer shall be labeled by the retailer in a manner prescribed by the superintendent of regulation and licensing with the name and address of the retailer and a control number assigned to that keg by the retailer. Retailers shall record the name and address and date of birth of the purchaser, the control number and the date of purchase for every keg sold on the notice form required by Subsection B of this section.

B. The superintendent of regulation and licensing shall prescribe a suitable notice form which shall include the pertinent provisions of Chapter 60, Article 7B NMSA 1978 and the penalty for violating the provisions of Chapter 60, Article 7B NMSA 1978. The notice form shall also contain a place for the name, address and driver's license number or other suitable identification for the person purchasing the keg. Every person who buys a keg at retail shall sign the form acknowledging that they have read the form. The signed forms shall be kept by the retailer until the keg is returned to that retailer, or six months, whichever is less, and shall be made available to law enforcement officials upon request.

C. As used in this section "keg" means a package of beer containing more than six gallons of beer at the time it is sold.

History: Laws 1989, ch. 140, § 1.

60-7B-13. Stocking alcoholic beverages in wet bars in hotel guest rooms prohibited; room service.

A. It is a violation of the Liquor Control Act [60-3A-1 NMSA 1978] for the proprietor or manager of a hotel to stock alcoholic beverages in a wet bar located in any guest room or sleeping room in the hotel unless the alcoholic beverages are contained in a locked compartment, the key to which may be made available to a guest after he has produced evidence of his age and identity by any document that contains a picture of the guest issued by a federal, state, county or municipal government, or subdivision or agency thereof, including but not limited to a motor vehicle driver's license or an identification card issued to a member of the armed forces.

B. Nothing in this section shall be construed to prevent:

(1) the consumption of alcoholic beverages by any person in a hotel guest room or sleeping room; or

(2) the sale or delivery of alcoholic beverages through room service to persons in hotel guest rooms or sleeping rooms; provided any employee of a hotel proprietor or manager delivering alcoholic beverages to a sleeping room may require that an identity card showing proof of age be shown to assure that alcoholic beverages are not sold, delivered or served to a minor in violation of the Liquor Control Act.

C. As used in this section, "wet bar" means a refrigerator, ice chest, cabinet, cupboard, pantry or similar container or storage area that is customarily used to store alcoholic or nonalcoholic beverages for consumption.

History: Laws 1993, ch. 68, § 27.

60-7B-14. Substance-related poisoning prevention; limited immunity.

A. A person who, in good faith, seeks medical assistance for someone experiencing an alcohol- or drug-related overdose shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating any of the following if

the evidence for the alleged violation was obtained as a result of the need for seeking medical assistance:

- (1) the provisions of Section 60-7B-1 or 60-7B-9 NMSA 1978;
- (2) a restraining order; or
- (3) the conditions of probation or parole.

B. A person who experiences an alcohol- or drug-related overdose and is in need of medical assistance shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating any of the following if the evidence for the alleged violation was obtained as a result of the overdose and the need for seeking medical assistance:

- (1) the provisions of Section 60-7B-1 or 60-7B-9 NMSA 1978;
- (2) a restraining order; or
- (3) the conditions of probation or parole.

C. The act of seeking medical assistance for someone who is experiencing an alcohol- or drug-related overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Liquor Control Act [60-3A-1 NMSA 1978 et seq.] for which immunity is not provided pursuant to this section.

D. For the purposes of this section, "seeking medical assistance" means:

- (1) reporting an alcohol- or drug-related overdose or other medical emergency to law enforcement, the 911 system or another emergency dispatch system, a poison control center or to a health care provider; or
- (2) assisting an individual who is reporting an alcohol- or drug-related overdose or providing care to an individual who is experiencing an alcohol- or drug-related overdose or other medical emergency while awaiting the arrival of a health care provider.

History: Laws 2019, ch. 211, § 11.

Effective dates. — Laws 2019, ch. 211, § 17 made

Laws 2019, ch. 211, § 11 effective July 1, 2019.

ARTICLE 8

Revocation and Suspension of Licenses

(Repealed by Laws 1981, ch. 39, § 128.)

60-8-1 to 60-8-11. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-8-1 to 60-8-11 NMSA 1978, relating to the revocation and suspension of licenses, effective July 1, 1981. For present

provisions, see 60-6B-7, 60-6C-1 to 60-6C-9, 60-7A-20 NMSA 1978.

ARTICLE 8A

Trade Practices

Sec.

60-8A-1. Unfair competition; exclusive outlet; tied house; consignment sales.

60-8A-1.1. Unlawful inducements.

60-8A-2. Territorial designation for distribution of beer; agreement.

60-8A-3. Invoices.

60-8A-4. Returns.

60-8A-5. Debts for merchandise sold in violation of law unenforceable; no garnishment on sales by retailers and dispensers.

60-8A-6. Primary American source of supply.

Sec.

60-8A-7. Franchises; definitions.

60-8A-8. Franchises; violations.

60-8A-9. Franchises; recovery of damages; injunction; remedies independent.

60-8A-10. Franchises; actions; defense.

60-8A-11. Franchises; time limit for bringing of action.

60-8A-12. Filing of schedules required.

60-8A-13. Selling to wholesalers at prices different than shown in schedule.

60-8A-14. Form of schedule.

60-8A-15. Filing of affirmation.

Sec. 60-8A-16. Failure to file; schedule deemed invalid.
 60-8A-17. Determination of lowest price.

Sec. 60-8A-18. Violation; penalty.
 60-8A-19. Authority to refuse affirmations.

60-8A-1. Unfair competition; exclusive outlet; tied house; consignment sales.

It is unlawful for an importer, manufacturer, nonresident licensee or any kind or class of wholesaler, directly or indirectly, or through an affiliate:

A. to require by agreement or otherwise that a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee engaged in the sale of alcoholic beverages in the state purchase alcoholic beverages from that person to the exclusion in whole or in part of alcoholic beverages sold or offered for sale by other persons;

B. to induce through any of the following means, a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee engaged in the sale of any kind or class of alcoholic beverages to purchase alcoholic beverages from that person to the exclusion in whole or in part of alcoholic beverages sold or offered for sale by other persons:

(1) by acquiring or holding, after the expiration of an existing license, an interest in a license with respect to the premises of the wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee;

(2) by acquiring an interest in real or personal property owned, occupied or used by a wholesaler, retailer, dispenser, restaurant licensee or club licensee in the conduct of the buying wholesaler's, retailer's, dispenser's, canopy licensee's, restaurant licensee's, club licensee's or governmental licensee's or its lessee's business, subject to exceptions that the director may prescribe, having due regard for the free flow of commerce, the purposes of this subsection and established trade customs not contrary to the public interest;

(3) by furnishing, giving, renting, lending or selling to a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee equipment, fixtures, signs, supplies, money, services or other thing of value, subject to exceptions that the director may by regulation prescribe, having due regard for public health and welfare, the quantity and value of the articles involved and established trade customs not contrary to the public interest and the purposes of this subsection;

(4) by paying or crediting the wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee for advertising, display or distribution services;

(5) by requiring a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee to take and dispose of a certain quota or combination of alcoholic beverages; or

(6) by commercial bribery by offering or giving a bonus, premium or compensation to an officer, employee, agent or representative of a wholesaler, retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee; or

C. to sell, offer for sale or contract to sell to a retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee alcoholic beverages of any kind or class on consignment or under a conditional sale or on a basis other than a bona fide sale; provided that this subsection shall not apply to transactions involving solely the bona fide return of alcoholic beverages for ordinary and usual commercial reasons arising after the alcoholic beverages have been sold, including a return of alcoholic beverages that are at or near spoilage or expiration date or that were damaged by the wholesaler, but not including a return of alcoholic beverages that were damaged by any other licensee or any other licensee's employees or customers.

History: Laws 1981, ch. 39, § 60; 2015, ch. 102, § 9.

The 2015 amendment, effective July 1, 2015, exempted alcoholic beverage transactions involving the return of certain alcoholic beverages for ordinary commercial reasons arising after the alcoholic beverages have been sold, from the prohibition of an importer,

manufacturer, nonresident licensee or any kind or class of wholesaler to sell alcoholic beverages under a conditional sale or on a basis other than a bona fide sale; in the introductory sentence of the section, after "unlawful for", deleted "any" and added "an"; in Subsection A, after "otherwise that", deleted "any" and added "a", and after

"purchase alcoholic beverages from", deleted "such" and added "that"; in the introductory paragraph of Subsection B, after "following means," deleted "any" and added "a", and after "purchase alcoholic beverages from", deleted "such" and added "that"; in Paragraph (1) of Subsection B, after "expiration of", deleted "any" and added "an", after "existing license," deleted "any" and added "an", and after "interest in", deleted "any" and added "a"; in Paragraph (2) of Subsection B, after "acquiring", deleted "any" and added "an", after "interest in", deleted "any", after "occupied or used by", deleted "any" and added "a"; after "subject to", deleted "such", after "exceptions", deleted "as" and added "that", after the director", deleted "shall" and added "an", and after "due regard", deleted "to" and added "for"; in Paragraph (3) of Subsection B, after "selling to", deleted "any" and added "a", after "licensee or its lessee", deleted "any", after "subject to", deleted "such", after "exceptions", deleted "as" and added "that", and after "director", deleted "shall" and added "may"; in Paragraph (4) of Subsection B, after "lessee for", deleted "any"; in Paragraph (5) of Subsection B, after "requiring", deleted

"any" and added "a"; in Paragraph (6) of Subsection B, after "representative of", deleted "any" and added "a"; in Subsection C, after "contract to sell to", deleted "any" and added "a", after "licensee or its lessee", deleted "any", after "conditional sale or on", deleted "any" and added "a", after "bona fide return of", deleted "merchandise" and added "alcoholic beverages", after "reasons arising after the", deleted "merchandise has" and added "alcoholic beverages have", after "been sold," added "including a return of alcoholic beverages that are at or near spoilage or expiration date or that were damaged by the wholesaler, but not including a return of alcoholic beverages that were damaged by any other licensee or any other licensee's employees or customers".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 187.
48 C.J.S. Intoxicating Liquors § 35.

60-8A-1.1. Unlawful inducements.

A. No retailer licensee, restaurant licensee, club licensee, governmental licensee or licensee that dispenses any kind or class of alcoholic beverage shall directly or indirectly, or through an affiliate, give or permit to be given money or any other thing of substantial value in any effort to induce any person to persuade or influence any other person to purchase, or contract for the purchase of, any particular brand or kind of alcoholic beverages, or to persuade or influence any person to refrain from purchasing, or refrain from contracting for the purchase of, any particular brand or kind of alcoholic beverages.

B. No retailer licensee, restaurant licensee, club licensee, governmental licensee or licensee that dispenses any kind or class of alcoholic beverage shall directly or indirectly, or through an affiliate, receive or otherwise accept an inducement prohibited pursuant to Subsection A of this section.

History: 1978 Comp., § 60-8A-1.1, enacted by Laws 2021, ch. 117, § 1.

Effective dates. — Laws 2021, ch. 117, § 2 made Laws 2021, ch. 117, § 1 effective July 1, 2021.

60-8A-2. Territorial designation for distribution of beer; agreement.

Every brewer, whether located within or without New Mexico, may designate territorial limits in the state within which the brand or brands of beer manufactured by the manufacturer may be sold by wholesalers of beer to licensees. A wholesaler of beer may enter into written agreement with the manufacturer of the brand of beer to be sold by the wholesaler which sets forth the territorial limits within which the wholesaler may distribute the beer. A copy of the agreement and any amendments shall be filed with the department by the wholesaler.

History: Laws 1981, ch. 39; § 61.

60-8A-3. Invoices.

Whenever a New Mexico wholesaler delivers any item of alcoholic beverages to a New Mexico retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee, the delivery shall be accompanied by an invoice which accurately and clearly shows the date of the sale and the quantity of each item of merchandise delivered. The retailer, dispenser, canopy licensee, restaurant licensee, club licensee or governmental licensee or its lessee receiving the alcoholic beverages shall retain the invoice for a period of two years. The invoices shall be open for inspection and examination by any employee of the department or the taxation and revenue department during all usual business hours.

History: Laws 1981, ch. 39, § 70.

ANNOTATIONS

"Invoice" construed. — Document, which was labeled as an invoice, listing various types of beer along with the quantity, unit price, total price, and a discount, was an "invoice" within the meaning of this section. *Pucci Distrib. Co. v. Nellos*, 1990-NMSC-074, 110 N.M. 374, 796 P.2d 595.

Licensee must observe obligations of each license owned. — A person owning more than one license must still exercise the rights and observe the obligations granted by each license independently of the other licenses. 1980 Op. Att'y Gen. No. 80-34.

A licensee holding more than one dispenser or retailer license may not purchase all the alcoholic liquors needed by his multiple operations under the privilege of only one license, store them unsegregated in a common facility, and then distribute them from the common facility, as needed, to the different licensed operations. 1980 Op. Att'y Gen. No. 80-34.

Law reviews. — For survey of 1990-91 commercial law, see 22 N.M.L. Rev. 661 (1992).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 205.

60-8A-4. Returns.

A. The return or repossession of any stock of alcoholic beverages to or by any licensed New Mexico wholesaler shall not be construed as a sale within the meaning of any provision of the Liquor Control Act [60-3A-1 NMSA 1978].

B. The provisions of Subsection A of this section shall apply in case of the return or repossession of any alcoholic beverages to or by a nonresident licensee by or from any New Mexico wholesaler.

History: Laws 1981, ch. 39, § 73.

60-8A-5. Debts for merchandise sold in violation of law unenforceable; no garnishment on sales by retailers and dispensers.

No action shall be maintained or a garnishment or attachment be issued to collect any debt for merchandise sold, served or delivered in violation of the Liquor Control Act [60-3A-1 NMSA 1978]. No writ of garnishment shall issue where the debt or obligation or the cause of action in the original suit or the garnishment action is founded upon the sale or purchase of alcoholic beverages by or from a retailer or dispenser as defined in Section 3 [60-3A-3 NMSA 1978] of that act.

History: Laws 1981, ch. 39, § 76.

Writ of garnishment. — Laws 1909, ch. 62, § 1, relating to writs of garnishment and grounds for garnishment, was repealed by Laws 1969, ch. 139, § 2.

sanction of disallowing actions to recover debt also applies to violations of the tied-house laws. *N.M. Beverage Co. v. Blything*, 1985-NMSC-039, 102 N.M. 533, 697 P.2d 952.

Law reviews. — For survey of 1990-91 commercial law, see 22 N.M.L. Rev. 661 (1992).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 213.

ANNOTATIONS

Application of section. — This section applies not only to illegal credit sales by retailers to consumers, but

60-8A-6. Primary American source of supply.

For the purpose of tax revenue control, no holder of a nonresident license or resident broker license may solicit, accept or fill an order for distilled spirits or wine from a holder of any type of wholesaler's license unless the nonresident licensee or resident broker is the primary American source of supply for the brand of distilled spirits or wine that is ordered. As used in this section, "primary American source of supply" means the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler or the exclusive agent of any of those. To be the "primary American source of supply," the nonresident licensee or resident broker must be the first source, that is, the manufacturer or the source closest to the manufacturer, in the channel of commerce from whom the product can be secured by American wholesalers.

History: Laws 1981, ch. 39, § 122.

60-8A-7. Franchises; definitions.

As used in Sections 60-8A-7 through 60-8A-11 NMSA 1978:

A. "franchise" means a contract or agreement, either expressed or implied, whether written or oral, between a supplier and wholesaler, wherein:

(1) a commercial relationship of definite duration or continuing indefinite duration is involved; and

(2) the wholesaler is granted the right to buy and to offer, sell and distribute within this state or any designated area thereof such of the supplier's brand of packaged alcoholic beverages as may be agreed upon;

B. "good cause":

(1) includes failure by the wholesaler to substantially comply with the essential and reasonable provisions of a contract, agreement or understanding with a supplier;

(2) includes use of bad faith on the part of the wholesaler in carrying out the terms of the franchise; and

(3) does not include failure or refusal on the part of the wholesaler to engage in any trade practice, conduct or activity that may result in a violation of any federal law or regulation or any law or regulation of this state;

C. "supplier" means a person, partnership, corporation or other form of business enterprise engaged in business as a manufacturer, importer, broker, agent or its successors or assigns that distributes any or all of its brands of alcoholic beverages through licensed wholesalers in this state. "Supplier" does not include successors or assigns for spirituous liquors or wines;

D. "termination" includes any substantial alteration or modification of the provisions of the franchise; and

E. "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing in the trade as evidenced by all surrounding circumstances.

History: Laws 1981, ch. 39, § 54; 1987, ch. 263, § 1; 2003, ch. 100, § 1.

that" for "or agent which" following "importer, broker" and added the last sentence.

The 2003 amendment, effective July 1, 2003, in Subsection C, substituted "agent or its successors or assigns

60-8A-8. Franchises; violations.

A. The purpose of the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978 is to provide an equal bargaining position between the parties and to protect the health, safety and welfare of the citizens by ensuring that there is an orderly and fair distribution of alcoholic beverages in the state.

B. It is a violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for the supplier, directly or through any officer, agent or employee, to fail to act in good faith in performing or complying with any terms, provisions or conditions of the franchise, or in terminating, canceling or not renewing a franchise with a wholesaler, unless such termination, cancellation or failure to renew is done in good faith and for good cause. Good cause shall not include supplier mergers or acquisitions or consolidation of brands with one wholesaler.

C. If more than one franchise for the same brand or brands of alcoholic beverages is originally granted to different wholesalers in this state, it is a violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for any supplier to discriminate in any of the terms, provisions and conditions of the franchise between the wholesalers. It is not the purpose of this section to allow suppliers to unilaterally and without good cause or in violation of the contract change the terms of an existing franchise or exclusive distribution agreement by authorizing the transfer of brands to another wholesaler in violation of this act [60-8A-7 to 60-8A-11 NMSA 1978].

History: Laws 1981, ch. 39, § 55; 1993, ch. 57, § 1.

The 1993 amendment, effective June 18, 1993, added present Subsection A and redesignated former

Subsections A and B as present Subsections B and C; substituted "60-8A-7 through 60-8A-11 NMSA 1978" for "54 through 58 of the Liquor Control Act" in Subsections B

and C; added the second sentences in Subsections B and C; and inserted "originally" near the beginning of the first sentence in Subsection C.

ANNOTATIONS

Evidence warranting appointment of second distributor. — The court's findings of fact support conclusion that supplier acted in good faith and for good cause in appointing a second distributor in New Mexico and that distributor's cause of action for violation of the franchise statutes fails where distributor consistently failed to meet sales expectations, followed a market philosophy contrary to that of supplier, failed to take sufficient steps as promised to improve its performance, and, in supplier's business judgment, failed to adequately represent supplier's product in New Mexico in light of supplier's repeated notifications of its substandard performance and attempts to anticipate improvements. *State Distribs., Inc. v. Glenmore Distilleries Co.*, 738 F.2d 405 (10th Cir. 1984)(decided prior

to 1987 amendment of Section 60-8A-7 NMSA 1978, defining "good faith").

Section not given retroactive effect. — This section was not to be applied retroactively to reach an agreement made before the act became effective, even where the termination of such agreement occurred afterwards. *Southwest Distrib. Co. v. Olympia Brewing Co.*, 1977-NMSC-050, 90 N.M. 502, 565 P.2d 1019.

Choice of law. — Kentucky law and not the New Mexico Alcoholic Beverage Franchise Act applied to distributorship contracts, where the contracts bore a reasonable relation to the state of Kentucky and the choice of law provision therein did not violate some fundamental principle of justice. *United Wholesale Liquor Co. v. Brown-Forman Distillers Corp.*, 1989-NMSC-030, 108 N.M. 467, 775 P.2d 233.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction and effect of state franchising statute, 67 A.L.R.3d 1299.

60-8A-9. Franchises; recovery of damages; injunction; remedies independent.

A. Any wholesaler may bring an action against a supplier for violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 in any court of competent jurisdiction, and may recover damages, together with the costs of the action, including reasonable attorneys' fees.

B. Any wholesaler may bring an action against a supplier in any court of competent jurisdiction for injunctive relief against termination, cancellation or failure to renew a franchise in violation of the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978.

C. The remedies provided in this section are independent of and supplemental to any other remedy available to the wholesaler in law or equity.

D. It is the intent of the legislature that the Liquor Control Act [60-3A-1 NMSA 1978] control contractual relations between suppliers and wholesalers in the state. Any contract provision which has the effect of circumventing the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978, whether a "choice of law" provision, or other provision, shall be deemed null and void and not applicable to franchises between suppliers and wholesalers in the state.

E. In any action brought by a wholesaler against a supplier under the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978, if it is determined that the supplier terminated a franchise without good cause or not in good faith, such supplier shall be responsible to any wholesaler so aggrieved in damages in an amount not less than three times the annual gross profits derived by such wholesaler from the sale of any and all brands under such franchise.

History: Laws 1981, ch. 39, § 56; 1993, ch. 57, § 2.

The 1993 amendment, effective June 18, 1993, substituted "60-8A-7 through 60-8A-11 NMSA 1978" for "54

through 58 of the Liquor Control Act" in Subsections A and B and added Subsections D and E.

60-8A-10. Franchises; actions; defense.

In any action brought by a wholesaler against a supplier for termination, cancellation or failure to renew a franchise in violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978, it is a complete defense for the supplier to prove that the termination, cancellation or failure to renew was done in good faith and for good cause. It shall not be a defense to any action brought by a wholesaler against a supplier under the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for the supplier to claim that the laws of another state control over those provisions or in any way make the cited provisions not applicable.

History: Laws 1981, ch. 39, § 57; 1993, ch. 57, § 3.

The 1993 amendment, effective June 18, 1993, substituted "60-8A-7 through 60-8A-11 NMSA 1978" for "54

through 58 of the Liquor Control Act" and added the second sentence.

ANNOTATIONS

Evidence warranting appointment of second distributor. — The court's findings of fact support conclusion that supplier acted in good faith and for good cause in appointing a second distributor in New Mexico and that distributor's cause of action for violation of the franchise statutes fails where distributor consistently failed to meet sales expectations, followed a market philosophy contrary

to that of supplier, failed to take sufficient steps as promised to improve its performance, and, in supplier's business judgment, failed to adequately represent supplier's product in New Mexico in light of supplier's repeated notifications of its substandard performance and attempts to anticipate improvements. *State Distribs., Inc. v. Glenmore Distilleries Co.*, 738 F.2d 405 (10th Cir. 1984) (decided prior to 1987 amendment of Section 60-8A-7 NMSA 1978, defining "good faith").

60-8A-11. Franchises; time limit for bringing of action.

Any action brought pursuant to Sections 54 through 58 [60-8A-7 to 60-8A-11 NMSA 1978] of the Liquor Control Act shall be forever barred unless commenced within one year after the cause of action has accrued.

History: Laws 1981, ch. 39, § 58.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 48 C.J.S. Intoxicating Liquors § 449.

60-8A-12. Filing of schedules required.

A. No brand of spirituous liquors shall be sold to or purchased by a wholesaler, irrespective of the place of sale or delivery, unless a price and discount schedule is filed with the director and is then in effect.

B. Such schedule shall be filed by the owner of the brand who is the holder of a nonresident license issued by the department.

History: Laws 1981, ch. 39, § 62; 1985, ch. 5, § 1.

ANNOTATIONS

Former Discrimination in Selling Act constitutional. — The 1967 New Mexico Discrimination in Selling Act, former Sections 60-12-1 through 60-12-10 NMSA 1978, similar to present Sections 60-8A-12 through

60-8A-19 NMSA 1978, was constitutional. *U.S. Brewers Ass'n v. Rodriguez*, 465 U.S. 1093, 104 S. Ct. 1581, 80 L. Ed. 2d 115 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 237.
Price regulation, 14 A.L.R.2d 699.
48 C.J.S. Intoxicating Liquors § 191.

60-8A-13. Selling to wholesalers at prices different than shown in schedule.

A brand of spirituous liquors shall not be sold to wholesalers except at the price and discounts shown on the schedule unless prior written permission of the director is granted for reasons not inconsistent with the purposes of Sections 60-8A-12 through 60-8A-19 NMSA 1978.

History: Laws 1981, ch. 39, § 63; 1985, ch. 5, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 203.
48 C.J.S. Intoxicating Liquors § 212.

60-8A-14. Form of schedule.

The schedule of prices and discounts shall be in writing, duly verified and filed in the number of copies, form and at such time as required by the director. It shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents and age and proof where stated on the label; the number of bottles contained in each case; the bottle and case price to wholesalers, which shall be individual for each item; the discounts for quantity, if any; and the discounts for time of payment, if any.

History: Laws 1981, ch. 39, § 64.

60-8A-15. Filing of affirmation.

The owner of a brand of spirituous liquors shall file as part of the schedule a verified affirmation that the price to New Mexico wholesalers is no greater than the lowest price at which the item of spirituous liquors is sold by the brand owner or any related person to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores. As used in this section, "related person" means any person:

- A. in any business in which the brand owner has an interest, direct or indirect, by stock or other security ownership, as lender or lienor or by interlocking director or officer;
- B. in the exclusive, principal or substantial business of selling a brand of spirituous liquors purchased from the brand owner; or
- C. who has an exclusive franchise or contract to sell the brand of spirituous liquors.

History: Laws 1981, ch. 39, § 65; 1985, ch. 5, § 3.

ANNOTATIONS

Constitutionality. — This section is neither arbitrary nor discriminatory and does not violate due process or equal protection and is, therefore, constitutional. *United States Brewers Ass'n v. Director of N.M. Dep't of ABC*, 1983-NMSC-059, 100 N.M. 216, 668 P.2d 1093, appeal dismissed, 465 U.S. 1093, 104 S. Ct. 1581, 80 L. Ed. 2d 115 (1984).

This section violates the Commerce Clause of the United States Constitution even though it regulates all brand owners of intoxicating liquors evenhandedly, arguably promotes the state's legitimate interest in assuring the lowest possible price, for its residents, and allows brand owners to change out-of-state prices for a product once the price and discount schedule mandated by Section 60-8A-12 NMSA 1978 is filed; because its practical effect is to control prices in other states. *Brown-Forman Corp. v. N.M. Dep't of ABC*, 672 F. Supp. 1383 (D.N.M. 1987).

60-8A-16. Failure to file; schedule deemed invalid.

If an affirmation with respect to any item of spirituous liquors is not filed within the prescribed time, any schedule for which the affirmation is required shall be deemed invalid with respect to that item of spirituous liquors, and the item shall not be sold to or purchased by any wholesaler during the period covered by the schedule.

History: Laws 1981, ch. 39, § 66; 1985, ch. 5, § 4.

60-8A-17. Determination of lowest price.

In determining the lowest price for which any item of spirituous liquors was sold in any other state or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores, appropriate reductions shall be made to reflect all discounts in excess of those to be in effect under the schedule, and all rebates, free goods, allowances and other inducements of any kind whatsoever offered or given to any such wholesaler, state or state agency or retailer, as the case may be, purchasing the item in the other state or in the District of Columbia. Nothing contained in Sections 60-8A-12 through 60-8A-19 NMSA 1978 shall prevent differentials in price which make only due allowance for differences in state taxes and fees and in the actual cost of delivery. As used in this section, "state taxes and fees" means the excise taxes imposed or the fees required by any state or the District of Columbia upon, or based upon, the liter of spirituous liquors.

History: Laws 1981, ch. 39, § 67; 1985, ch. 5, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 265.

Validity of state statute or regulation fixing minimum prices at which alcoholic beverages may be sold at retail, 96 A.L.R.3d 639.

60-8A-18. Violation; penalty.

Any person who knowingly makes a false statement in any affirmation made and filed pursuant to Sections 62 through 69 [60-8A-12 to 60-8A-19 NMSA 1978] of the Liquor Control Act shall be

liable for suspension of any license issued by the department for a period not to exceed five days for the first offense and thirty days for each offense thereafter.

History: Laws 1981, ch. 39, § 68.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors § 431.
48 C.J.S. Intoxicating Liquors § 286.

60-8A-19. Authority to refuse affirmations.

Upon finding that a person has violated the Liquor Control Act [60-3A-1 NMSA 1978] and after appeal or, in the event no appeal is taken, upon the expiration of the time during which an appeal could have been taken, the director may refuse to accept any affirmation required to be filed by such person for a period not to exceed three months.

History: Laws 1981, ch. 39, § 69.

ANNOTATIONS

Veto of severability clause unconstitutional. — The governor's veto of Laws 1981, ch. 39, § 129, the severability clause of the Liquor Control Act, was unconstitutional

under N.M. Const., art. IV, § 22, because that act does not appropriate money and the governor's power of partial veto is limited to bills appropriating money. *Chronis v. State ex rel. Rodriguez*, 1983-NMSC-081, 100 N.M. 342, 670 P.2d 953.

ARTICLE 9

Trade Practices

(Repealed by Laws 1981, ch. 39, § 128.)

60-9-1 to 60-9-12. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-9-1 to 60-9-12 NMSA 1978, relating to trade practices, effective

July 1, 1981. For present provisions, see 60-8A-1 to 60-8A-11.

ARTICLE 10

Offenses and Penalties

Sec. 60-10-1 to 60-10-15. Repealed.

60-10-16. Recompiled.

Sec.

60-10-17 to 60-10-40. Repealed.

60-10-1 to 60-10-15. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-10-1 to 60-10-15 NMSA 1978, relating to offenses, effective

July 1, 1981. For present provisions, see 60-7A-1 to 60-7A-25 and 60-7B-1 to 60-7B-11 NMSA 1978.

60-10-16. Recompiled.

Recompilations. — Former 60-10-16 NMSA 1978, relating to selling or giving liquor to minors and possession by minors has been recompiled as 60-7B-1.1 NMSA 1978.

60-10-17 to 60-10-40. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-10-17 to 60-10-40 NMSA 1978, relating to offenses and penalties,

effective July 1, 1981. For present provisions, see 60-7A-1 to 60-7A-25 and 60-7B-1 to 60-7B-11 NMSA 1978.

ARTICLE 11

Miscellaneous Provisions

(Repealed by Laws 1981, ch. 39, § 128.)

60-11-1 to 60-11-4. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-11-1 to 60-11-4 NMSA 1978, relating to miscellaneous provisions

of the Liquor Control Act, effective July 1, 1981. For present provisions, see 60-3A-5, 60-8A-5 NMSA 1978.

ARTICLE 12

Discrimination in Selling Act

(Repealed by Laws 1981, ch. 39, § 128.)

60-12-1 to 60-12-10. Repealed.

Repeals. — Laws 1981, ch. 39, § 128, repeals 60-12-1 to 60-12-10 NMSA 1978, the "Discrimination in Selling Act,"

effective July 1, 1981. For present provisions, see 60-8A-12 to 60-8A-19 NMSA 1978.

ARTICLE 13

Construction Industries Licensing

Sec.

- 60-13-1. Short title.
- 60-13-1.1. Purpose of the act.
- 60-13-2. General definitions.
- 60-13-3. Definition; contractor.
- 60-13-3.1. Employer and employee relationship; independent contractor; improper reporting; penalty; license sanctions.
- 60-13-4. Recompiled.
- 60-13-5. Repealed.
- 60-13-6. Construction industries commission created; membership; duties.
- 60-13-7. Construction industries division; director; appointment and qualifications.
- 60-13-8. Division; employees; equipment and supplies.
- 60-13-8.1. Construction industries division publications revolving fund created; appropriation.
- 60-13-9. Division; duties.
- 60-13-10. Additional division duties; flood or mudslide areas; standards.
- 60-13-10.1. Division; additional duties; alcohol fuel plant construction code; rules and regulations.
- 60-13-10.2. Division and commission; standards to accommodate solar collectors.
- 60-13-10.3. Equal access to public baby changing facilities.
- 60-13-11. Division or commission; powers.
- 60-13-12. Contractor's license required.
- 60-13-13. Application for contractor's license.
- 60-13-13.1. Repealed.
- 60-13-13.2. Licensees; identical or similar names.
- 60-13-14. Division; license issuance; reports.
- 60-13-14.1. Expedited licensure; military service members, spouses and dependents; veterans; waiver of fees.

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- 60-13-15. License issuance; commission review.
- 60-13-16. Division; qualifying party; examination; certificate.
- 60-13-17. Repealed.
- 60-13-18. Licenses; renewal.
- 60-13-19. Division; evidence of possession; penalty.
- 60-13-20. Fees established by the division; payment of examination and licensing service fees.
- 60-13-21. Division; disposition of fees.
- 60-13-21.1. Repealed.
- 60-13-22. Repealed.
- 60-13-23. Revocation or suspension of license by the commission; causes.
- 60-13-23.1. Administrative penalty.
- 60-13-24. Certificates of qualification; statewide inspector's certificates; causes for revocation or suspension.
- 60-13-25. Qualifying party; termination of relationship.
- 60-13-26. Division; trade bureaus; liability of commission members.
- 60-13-27. Complaints against licensees and certificate holders; investigations by division; informal resolution; notice of revocation action.
- 60-13-28. Suspension period.
- 60-13-29. Application following revoked license or certificate.
- 60-13-30. Suit by contractor for compensation; pleading and proof of license.
- 60-13-31. Trade bureaus created.
- 60-13-32. Trade bureaus; definitions.
- 60-13-33. Trade bureaus; general duties and powers.
- 60-13-34, 60-13-35. Repealed.
- 60-13-36. Certificates of competence; suspension and revocation.

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60-13-37. Repealed.	60-13-49. Proof of responsibility.
60-13-38. Certificates of competence; examination; journeymen.	60-13-50. Repealed.
60-13-39. Certificates and examination.	60-13-51. Contractor's bond; municipal requirement prohibited.
60-13-40. Repealed.	60-13-52. Penalty; misdemeanor.
60-13-40.1. Repealed.	60-13-53. Commission or division; powers of injunction; mandamus.
60-13-41. Inspectors; designated inspection agencies.	60-13-54. Continuation of license.
60-13-42. Authority of inspectors; limitation.	60-13-55. Continuation of construction codes and standards.
60-13-43. Repealed.	60-13-56. Repealed.
60-13-44. Trade bureaus; standards; conflicts.	60-13-57. Hearing officer authorized.
60-13-45. Trade bureaus; permits.	60-13-58. Repealed.
60-13-46. Trade bureaus; annual permits.	60-13-59. Building permits; contents; display.
60-13-47. Trade bureaus; connection to installation.	
60-13-48. Repealed.	
60-13-48.1. Financial statements; confidentiality.	

60-13-1. Short title.

Chapter 60, Article 13 NMSA 1978 may be cited as the "Construction Industries Licensing Act".

History: 1953 Comp., § 67-35-1, enacted by Laws 1967, ch. 199, § 1; 1989, ch. 6, § 1.

Cross references. — For exemption of construction industries committee from authority of superintendent of regulation and licensing, see 9-16-12 NMSA 1978.

For excavation damage to pipelines and underground utility lines, see 62-14-1 NMSA 1978 et seq.

For prohibition against removal or alteration of identification marks from construction equipment, see 70-2-36 NMSA 1978.

The 1989 amendment, effective July 1, 1989, substituted "Chapter 60, Article 13 NMSA 1978" for "this act".

Compiler's notes. — This section was not enacted as part of the Construction Industries Licensing Act but has been compiled here for the convenience of the user.

ANNOTATIONS

Licensing boards not contravention of state constitution. — Former act to create boards for the licensing of contractors, and vest them with administrative powers, did not contravene N.M. Const., art. VI, § 13, vesting original jurisdiction of all matters and causes in the district courts. *Fischer v. Rakagis*, 1955-NMSC-057, 59 N.M. 463, 286 P.2d 312.

Purpose of the act is to provide a comprehensive method for the licensing and control of contractors in order to protect the public from either irresponsible or incompetent contractors. *In re Romero*, 535 F.2d 618 (10th Cir. 1976).

Phrase "not otherwise exempt by law" in Section 3-38-1 NMSA 1978, allowing licensing and regulation of

certain businesses, refers to the exemptions from licensing and regulation created by the Construction Industries Licensing Act, those created by the Private Investigators' Act (now Private Investigations Act, Chapter 61, Article 27B NMSA 1978) and possibly to other statutory exemptions. 1969 Op. Att'y Gen. No. 69-72.

This act does not apply to state agencies insofar as licensing is concerned. 1971 Op. Att'y Gen. No. 71-55.

Employment of former legislative member. — A member of the legislature who resigns his position as a member of such legislature may not be legally employed by the construction industries commission (now replaced by the construction industries division). 1968 Op. Att'y Gen. No. 68-121.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Building and Construction Contracts §§ 130, 131; 51 Am. Jur. 2d Licenses and Permits § 1 et seq.; 58 Am. Jur. 2d Occupations, Trades and Professions § 1 et seq.

Validity, construction and application of regulations of business of building or construction contractors, 118 A.L.R. 676.

Failure of building and construction artisan or contractor to procure business or occupational license as affecting enforceability of contract or right to recover for work done — modern cases, 44 A.L.R.4th 271.

Products liability: roofs and roofing materials, 3 A.L.R.5th 851.

Municipal liability for negligent performance of building inspector's duties, 24 A.L.R.5th 200.

53 C.J.S. Licenses § 34.

60-13-1.1. Purpose of the act.

The purpose of the Construction Industries Licensing Act [60-13-1 NMSA 1978] is to promote the general welfare of the people of New Mexico by providing for the protection of life and property by adopting and enforcing codes and standards for construction, alteration, installation, connection, demolition and repair work. To effect this purpose, it is the intent of the legislature that:

A. examination, licensing and certification of the occupations and trades within the jurisdiction of the Construction Industries Licensing Act be such as to ensure or encourage the highest quality of performance and to require compliance with approved codes and standards and be, to the maximum extent possible, uniform in application, procedure and enforcement;

B. there be eliminated the wasteful and inefficient administrative practices of dual licensing, duplication of inspection, nonuniform classification and examination of closely related trades or occupational activities and jurisdictional conflicts; and

C. contractors be required to furnish and maintain evidence of responsibility.

History: 1953 Comp., § 67-35-4, enacted by Laws 1967, ch. 199, § 4; 1978 Comp., § 60-13-4, recompiled as § 60-13-1.1 by Laws 1989, ch. 6, § 2.

ANNOTATIONS

Statutory policy. — The policy of the CILA is best served by imposing proportional liability on general contractors who hire unlicensed independent contractors to do dangerous work requiring a license for foreseeable injuries those independent contractors suffer due to their lack of qualifications. A general contractor who negligently hires an unqualified independent contractor to perform dangerous work may be liable for injuries to that same unqualified independent contractor. *Tafoya v. Rael*, 2008-NMSC-057, 145 N.M. 4, 193 P.3d 551.

Purpose of this act is to protect the public from incompetent and irresponsible builders, and in view of the severity of the sanctions and the forfeitures which could be involved, courts are reluctant to construe the act more broadly than necessary for achievement of its purpose; its provisions should not be transformed into an "unwarranted shield for the avoidance of a just obligation." *Olivas v. Sibco, Inc.*, 1975-NMSC-027, 87 N.M. 488, 535 P.2d 1339.

Administrative probable cause and administrative warrant requirements. — Administrative probable

cause exists based on either specific evidence of an existing violation or a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied with respect to a particular establishment. The warrant application must inform the judicial officer of the substance of the complaint so that it can determine whether the alleged conditions, if true, constitute a violation. *N.M. Construction Indus. Div. v. Cohen*, 2019-NMCA-071.

Administrative search warrant was required.

— Where the New Mexico construction industries and manufactured housing division (division) received a written complaint regarding unsafe conditions on respondent's rental property and a written complaint regarding multiple additions that had occurred on the property without the proper permits or inspections, and where the division's inspectors attempted to inspect the property to look for code violations but were denied access by respondent, the district court erred in ordering the division to inspect the property, because although the district court's order found that the division had statutory authority to conduct an inspection, the order lacked a determination of whether probable cause supported an administrative search warrant and no exception to the warrant requirement applied. *N.M. Construction Indus. Div. v. Cohen*, 2019-NMCA-071.

60-13-2. General definitions.

As used in the Construction Industries Licensing Act:

A. "division" means the construction industries division of the regulation and licensing department;

B. "trade bureau", "jurisdiction" and "trade bureau jurisdiction" mean the electrical bureau, the mechanical bureau, the general construction bureau or the liquefied petroleum gas bureau of the division;

C. "jurisdictional conflict" means a conflict between or among trade bureaus as to the exercise of jurisdiction over an occupation or trade for which a license is required under the provisions of the Construction Industries Licensing Act;

D. "person" includes an individual, firm, partnership, corporation, association or other organization, or any combination thereof;

E. "qualifying party" means an individual who submits to the examination for a license to be issued under the Construction Industries Licensing Act and who is responsible for the licensee's compliance with the requirements of that act and with the rules, regulations, codes and standards adopted and promulgated in accordance with that act;

F. "certificate of qualification" means a certificate issued by the division to a qualifying party;

G. "journeyman" means an individual who is properly certified by the electrical bureau or the mechanical bureau, as required by law, to engage in or work at the certified trade;

H. "apprentice" means an individual who is engaged, as the individual's principal occupation, in learning and assisting in a trade;

I. "wages" means compensation paid to an individual by an employer from which taxes are required to be withheld by federal and state law;

J. "public use" means the use or occupancy of a structure, facility or manufactured commercial unit to which the general public, as distinguished from residents or employees, has access;

K. "bid" means a written or oral offer to contract;

L. "building" means a structure built for use or occupancy by persons or property, including manufactured commercial units and modular homes or premanufactured homes designed to be

placed on permanent foundations whether mounted on skids or permanent foundations or whether constructed on or off the site of location;

M. "inspection agency" means a firm, partnership, corporation, association or any combination thereof approved in accordance with regulations as having the personnel and equipment available to adequately inspect for the proper construction of manufactured commercial units, modular homes or premanufactured homes;

N. "director" means the administrative head of the division;

O. "chief" means the administrative head of a trade bureau;

P. "commission" means the construction industries commission;

Q. "manufactured commercial unit" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width that is constructed to be towed on its own chassis and designed so as to be installed without a permanent foundation for use as an office or other commercial purpose and that may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, as well as a single unit, but that does not include any movable or portable housing structure over twelve feet in width and forty feet in length that is used for nonresidential purposes. "Manufactured commercial unit" does not include modular or premanufactured homes, built to a nationally recognized standard adopted by the commission and designed to be permanently affixed to real property;

R. "code" means a body or compilation of provisions or standards adopted by the commission that govern contracting or some aspect of contracting; that provide for safety and protection of life and health; and that are published by a nationally recognized standards association;

S. "inspector" means a person certified by the division and certified by one or more trade bureaus to conduct inspections of permitted work to ensure that all work performed by a contractor or the homeowner complies with the applicable code;

T. "statewide inspector's certificate" means a certificate that enables an inspector to conduct inspections in one or more trade bureau jurisdictions for the state or any county, municipality or other political subdivision that has a certified building official in its employ; and

U. "certified building official" means an employee of any county, municipality or other political subdivision who has a broad knowledge of the construction industry, holds a current nationally recognized code organization certified building official certificate and has:

(1) been a practicing inspector or practicing contractor for at least five years; or

(2) held a management position in a construction-related company or construction organization for at least five of the past ten years.

History: 1953 Comp., § 67-35-2, enacted by Laws 1967, ch. 199, § 2; 1969, ch. 224, § 1; 1972, ch. 11, § 1; 1973, ch. 259, § 6; 1975, ch. 331, § 15; 1977, ch. 245, § 166; 1983, ch. 105, § 1; 1988, ch. 102, § 2; 1989, ch. 6, § 3; 2003, ch. 264, § 1; 2013, ch. 142, § 1; 2013, ch. 153, § 1.

The 2013 amendment, effective June 14, 2013, added definitions; in Subsection B, after "trade bureau", deleted "means" and added "jurisdiction" and "trade bureau jurisdiction" mean"; and added Subsections S through U.

Laws 2013, ch. 142, § 1, and Laws 2013, ch. 153, § 1, both effective June 14, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 153, § 1. See 12-1-8 NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted "but not limited to" following "occupancy by persons

or property, including" near the beginning of Subsection L; substituted "a nationally recognized standard adopted by the commission and" for "Uniform Building Code standards" following "built to" near the end of Subsection Q; in Subsection R, substituted "adopted by the commission that" for "which" following "provisions or standards" near the beginning, substituted "and that are published" for "which are approved" following "life and health;" near the middle, and deleted "and which standards are in general use in the United States or in a clearly defined region of the United States. The term 'code' includes the Uniform Building Code, the National Electrical Code, the Uniform Plumbing and Mechanical Code, the LP Gas Code and any other codes adopted by the commission" at the end.

60-13-3. Definition; contractor.

As used in the Construction Industries Licensing Act [60-13-1 NMSA 1978], "contractor":

A. means any person who undertakes, offers to undertake by bid or other means or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes constructing, altering, repairing, installing or demolishing any:

- (1) road, highway, bridge, parking area or related project;
- (2) building, stadium or other structure;
- (3) airport, subway or similar facility;
- (4) park, trail, bridle path, athletic field, golf course or similar facility;
- (5) dam, reservoir, canal, ditch or similar facility;
- (6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility;
- (7) sewerage, water, gas or other pipeline;
- (8) transmission line;
- (9) radio, television or other tower;
- (10) water, oil or other storage tank;
- (11) shaft, tunnel or mining appurtenance;
- (12) leveling or clearing land;
- (13) excavating earth;
- (14) air conditioning, conduit, heating or other similar mechanical works;
- (15) electrical wiring, plumbing or plumbing fixture, consumers' gas piping, gas appliances or water conditioners; or

(16) similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act;

B. includes subcontractor and specialty contractor;

C. includes a construction manager who coordinates and manages the building process; who is a member of the construction team with the owner, architect, engineer and other consultants required for the building project; and who utilizes his skill and knowledge of general contracting to develop schedules, prepare project construction estimates, study labor conditions and advise concerning construction; and

D. does not include:

(1) any person who merely furnishes materials or supplies at the site without fabricating them into, or consuming them in the performance of, the work of a contractor;

(2) any person who drills, completes, tests, abandons or operates any petroleum, gas or water well; or services equipment and structures used in the production and handling of any product incident to the production of any petroleum, gas or water wells, excluding any person performing duties normally performed by electrical, mechanical or general contractors; or who performs geophysical or similar exploration for oil, gas or water;

(3) a public utility or rural electric cooperative that constructs, reconstructs, operates or maintains its plant or renders authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the public utility or rural electric cooperative; provided that the construction of a building by a public utility or rural electric cooperative or the installation or repair of any consumer gas or electrical appliance not an integral part of the operational system makes a public utility or rural electric cooperative a contractor for that purpose;

(4) a utility department of any municipality or local public body rendering authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the utility department of the municipality;

(5) any railroad company;

(6) a telephone or telegraph company or rural electric cooperative that installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that work is an integral part of the operation of a communication system owned and operated by a telephone or telegraph company or rural electric cooperative in rendering authorized service;

(7) a pipeline company that installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that service is an integral part of the operation of the communication system of that pipeline company and is not for hire or for the use of the general public, or any pipeline company which installs, alters or repairs plumbing fixtures or gas piping where the work is an integral part of installing and operating the system owned or operated by the pipeline company in rendering its authorized service;

(8) any mining company, gas company or oil company that installs, alters or repairs its facilities, including plumbing fixtures or gas piping, where the work is an integral part of the installing or operating of a system owned or operated by the mining company, gas company or oil company; provided the construction of a building by a mining company, a gas company or an oil company is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with orders, rules, regulations, standards and codes adopted pursuant to that act;

(9) a radio or television broadcaster who installs, alters or repairs electrical equipment used for radio or television broadcasting;

(10) an individual who, by himself or with the aid of others who are paid wages and who receive no other form of compensation, builds or makes installations, alterations or repairs in or to a single-family dwelling owned and occupied or to be occupied by him; provided that the installation, building, alteration or repair is required to be done in conformity with all other provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978] and with the orders, rules, regulations, standards and codes adopted pursuant to that act;

(11) a person who acts on his own account to build or improve a single-family residence for his personal use, including the building or improvement of a free standing storage building located on that residential property; provided that the construction or improvement is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act; and provided further that he does not engage in commercial construction;

(12) a person who, by himself or with the aid of others who are paid wages and receive no other form of compensation, builds or makes installations, repairs or alterations in or to a building or other improvement on a farm or ranch owned, occupied or operated by him, or makes installations of electrical wiring that are not to be connected to electrical energy supplied from a power source outside the premises of the farm or ranch owned, occupied or operated by him; provided that the state codes and any local codes adopted pursuant to Subsection F of Section 60-13-44 NMSA 1978 shall not require any permits or inspections for such construction on a farm or ranch except for electrical wiring to be connected to a power source outside the premises;

(13) an individual who works only for wages;

(14) an individual who works on one undertaking or project at a time that, in the aggregate or singly, does not exceed seven thousand two hundred dollars (\$7,200) compensation a year, the work being casual, minor or inconsequential, such as handyman repairs; provided that this exemption shall not apply to any undertaking or project pertaining to the installation, connection or repair of electrical wiring, plumbing or gas fitting as defined in Section 60-13-32 NMSA 1978 and provided:

(a) the work is not part of a larger or major operation undertaken by the same individual or different contractor;

(b) the individual does not advertise or maintain a sign, card or other device which would indicate to the public that he is qualified to engage in the business of contracting; and

(c) the individual files annually with the division, on a form prescribed by the division, a declaration substantially to the effect that he is not a contractor within the meaning of the Construction Industries Licensing Act [60-13-1 NMSA 1978], that the work he performs is casual, minor or inconsequential and will not include more than one undertaking or project at one time and that the total amount of such contracts, in the aggregate or singly, will not exceed seven thousand two hundred dollars (\$7,200) compensation a year;

(15) any person, firm or corporation that installs fuel containers, appliances, furnaces and other appurtenant apparatus as an incident to its primary business of distributing liquefied petroleum fuel;

(16) a cable television or community antenna television company that constructs, installs, alters or repairs facilities, equipment, cables or lines for the provision of television service or the carriage and transmission of television or radio broadcast signals;

(17) any weatherization project not exceeding two thousand dollars (\$2,000) that has been approved and is administered by a federal or state agency; or

(18) a person who performs work consisting of short-term depreciable improvements to commercial property to provide needed repairs and maintenance for items not covered by building codes adopted by the construction industry commission if the total amount paid the person for the

work on a single undertaking, including materials, services and wages of those who work for him, does not exceed the sum of five thousand dollars (\$5,000).

History: 1953 Comp., § 67-35-3, enacted by Laws 1978, ch. 66, § 1; 1979, ch. 46, § 1; 1979, ch. 49, § 1; 1986, ch. 107, § 1; 1987, ch. 283, § 1; 1989, ch. 6, § 4; 1997, ch. 181, § 2; 1997, ch. 235, § 1; 1999, ch. 130, § 1.

Repeals and reenactments. — Laws 1978, ch. 66, § 1, repealed former 67-35-3, 1953 Comp. (former 60-13-3 NMSA 1978), as amended by Laws 1977, ch. 377, § 1, relating to definition of "contractor," and enacted a new 67-35-3, 1953 Comp.

The 1999 amendment, effective June 18, 1999, added Paragraph D(18); deleted "but not limited to" preceding "constructing" in Subsection A, preceding "plumbing fixtures" in Paragraph D(8), and preceding "handyman repairs" in Paragraph D(14); and made minor stylistic changes throughout the section.

The 1997 amendments. — Laws 1997, ch. 181, § 2, amending this section effective July 1, 1997 by adding a new Paragraph D(17) relating to persons performing needed repairs or maintenance to commercial property when the total amount paid for a single undertaking does not exceed \$5,000, was approved April 10, 1997. However, Laws 1997, ch. 235, § 1, amending this section by adding new Paragraph D(17) relating to weatherization projects not exceeding \$2,000, but not giving effect to the changes made by the first 1997 amendment, was approved April 11, 1997. This section was set out as amended by Laws 1997, ch. 235, § 1. See 12-1-8 NMSA 1978.

ANNOTATIONS

Contractor must have a license. — An individual who qualifies as a contractor under the definition of "contractor" in the Construction Industries Licensing Act is required to have a contractor's license when performing the specific acts described in the Construction Industries Licensing Act, regardless of whether the individual can be classified as an employee of a licensed contractor under the common law control test. *Reule Sun Corp. v. Valles*, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611; *rev'g* 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197, *overruling* *Latta v. Harvey*, 1960-NMSC-046, 67 N.M. 72, 352 P.2d 649 and *Campbell v. Smith*, 1961-NMSC-059, 68 N.M. 373, 362 P.2d 523.

Common law control test does not apply. — The common law control test for determining whether an individual is an employee does not apply to determine whether an individual is required to have a license under the Construction Industries Licensing Act. An unlicensed contractor's classification as an employee of a licensed contractor under the common law control test does not exempt the unlicensed contractor from the licensing requirements of the Construction Industries Licensing Act. *Reule Sun Corp. v. Valles*, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, *rev'g* 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197, *overruling* *Latta v. Harvey*, 1960-NMSC-046, 67 N.M. 72, 352 P.2d 649 and *Campbell v. Smith*, 1961-NMSC-059, 68 N.M. 373, 362 P.2d 523.

Former Contractors' License Law of 1939 was not unconstitutional as a denial of due process since the legislature could enact laws in the exercise of its police powers, provided only that the exercise was not so unreasonable as to amount to confiscation of property or a denial of the right to engage in a particular trade, occupation or profession. *Kaiser v. Thomson*, 1951-NMSC-037, 55 N.M. 270, 232 P.2d 142.

Filing requirement does not bar eligibility for exemption. — The filing requirement in this section is directory, not mandatory, and as such does not constitute a bar to the plaintiff's eligibility for the intended exemption. *Stokes v. Tatman*, 1990-NMSC-113, 111 N.M. 188, 803 P.2d 673.

"Contractor" status requires control of installation.

— The ordering and delivering of materials or the mere arranging for their installation does not bring suppliers of materials into the realm of the definition of "contractor" under subsection A where they are not, and their contracts do not place them, in control of the installation. *Verchinski v. Klein*, 1987-NMSC-003, 105 N.M. 336, 732 P.2d 863.

"Contractor" status requires control of employees.

— Where an employee leasing contractor that provided construction workers to the general contractor and the general contractor supervised and controlled the workers on the construction site, the employee leasing contractor did not act in the capacity of a contractor. *Eastland Fin. Servs. v. Mendoza*, 2002-NMCA-035, 132 N.M. 24, 43 P.3d 375.

Contractor when promise to mine and move copper ore. — A party who contracts to "perform certain mining work on copper siliceous ores" and to "pay for all labor, work, mining expenses, material, explosives and moving commercial copper ores to specified stockpile location" is a contractor within the terms of 67-16-2, 1953 Comp. (now repealed). *Salter v. Kindom Uranium Corp.*, 1960-NMSC-040, 67 N.M. 34, 351 P.2d 375.

Contractor when no hourly wage, time slips, or employee tax forms. — Defendant was not an employee of the person for whom he had contracted to construct a trailer park, and was therefore required to obtain a contractor's license, where he never received an hourly wage, did not submit time slips or employee tax forms, and the evidence was uncontroverted that the work performed fell within the requirements of Subsection A. *Mascarenas v. Jaramilla*, 1991-NMSC-014, 111 N.M. 410, 806 P.2d 59.

Contracts for "incidental" work exempted under former law. — Failure to reemploy the word "incidental" in the 1945 amendment did not leave the former Contractors' License Act applicable to contracts for work which was only "incidental" to the occupations or pursuits named as being exempted from the act. *B. & R. Drilling Co. v. Gardner*, 1951-NMSC-004, 55 N.M. 118, 227 P.2d 627.

Test as to independent contractor or employee.

— The principal test to determine whether one is an independent contractor or an employee is whether the employer has any control over the manner in which the details of the work are to be accomplished. Mere suggestions by the employer or the "directing control essential to coordinate the several parts of a larger undertaking" does not affect the relationship. It is the right to control, not the exercise of it, that furnishes the test. *Campbell v. Smith*, 1961-NMSC-059, 68 N.M. 373, 362 P.2d 523, *overruled on other grounds by* *Sundance Mech. & Util. Corp. v. Atlas*, 1990-NMSC-031, 109 N.M. 683, 789 P.2d 1250.

Independent contractor for assessment work.

— Where plaintiff, an expert miner, who was working his adjoining claims was hired to watch defendant's claim and to do defendant's assessment work to consist of 70 feet of tunnel for an agreed price per foot, the details of the work to be left entirely to plaintiff, plaintiff was acting as an independent contractor in the assessment work. *Campbell v. Smith*, 1961-NMSC-059, 68 N.M. 373, 362 P.2d 523, *overruled on other grounds by* *Sundance Mech. & Util. Corp. v. Atlas*, 1990-NMSC-031, 109 N.M. 683, 789 P.2d 1250.

Removal of structures included. — Although the removal of structures is not specifically included within the items named, the section provides that contracting includes the altering of buildings, and altering has some meaning other than constructing, repairing, installing or demolishing; otherwise, all of the words would not have been used in the section. *Fleming v. Phelps-Dodge Corp.*, 1972-NMCA-060, 83 N.M. 715, 496 P.2d 1111.

Neither the asserted contract for removal of a structure from plaintiff's land nor the removal process itself involves building or improving the structures (Subsection D(11)), or building, installations, repairs or alterations on a farm or ranch owned, occupied or operated by plaintiff (Subsection D(12)). Therefore, these exclusions do not exclude the asserted contract of removal from the meaning of "constructing." *Fleming v. Phelps-Dodge Corp.*, 1972-NMCA-060, 83 N.M. 715, 496 P.2d 1111.

No license required for contract to drill well. — A contract for drilling a well to supply water for agricultural purposes fell within the exceptions to which the former Contractors' License Act of 1939 did not apply. *B. & R. Drilling Co. v. Gardner*, 1951-NMSC-004, 55 N.M. 118, 227 P.2d 627.

No license requirement for cleaning activity. — Where construction work had been completed without objection and the only dispute centered around the amount of offset defendant should be allowed as costs for cleaning up the work site, the cleanup activity involved did not require a contractor's license according to the definitions of this section. *Olivas v. Sibco, Inc.*, 1975-NMSC-027, 87 N.M. 488, 535 P.2d 1339.

License required in partnership's name. — Contractors' License Law, 67-16-2, 1953 Comp. (now repealed), and the rules and regulations issued pursuant thereto, compelled partnerships to be licensed to hold a license in the partnership name. *Crumpacker v. Adams*, 1967-NMSC-060, 77 N.M. 633, 426 P.2d 781.

Necessary to establish that license required. — Defendant, seeking to invoke 67-16-14, 1953 Comp. (now repealed), prohibiting an unlicensed contractor from maintaining an action, must establish that plaintiff was in fact required to be licensed. *Crumpacker v. Adams*, 1967-NMSC-060, 77 N.M. 633, 426 P.2d 781.

Effect of knowledge of other party's lack of license. — Formerly the fact that defendants in an action to establish and foreclose mechanic's lien knew at the time they entered into contract with plaintiff that latter was not duly licensed did not estop them from asserting plaintiff's noncompliance with former licensing statute. *Kaiser v. Thomson*, 1951-NMSC-037, 55 N.M. 270, 232 P.2d 142.

Standing to attack constitutionality under former law. — Duly licensed contractors operating unmolested under the former act creating the license board (now abolished) were not in position to question constitutionality of the act where no proceeding was pending, contemplated or threatened by the board to revoke their licenses and no other action was contemplated by the board which would affect them adversely. *Brockman v. Contractors Licensing Bd.*, 1944-NMSC-038, 48 N.M. 304, 150 P.2d 125.

Highway contractors are included within definition of term "contractor" as used in the former Contractors' License Law. 1961-62 Op. Att'y Gen. No. 61-69.

Hourly worker not necessarily exempt. — The fact that a person undertakes to do work for another at an hourly rate does not necessarily by that fact alone exempt him from the definition of "contractor" under former law. 1955-56 Op. Att'y Gen. No. 55-6332.

Construction for own use on own land not included. — Under former version of this section (67-16-2, 1953 Comp.), a person constructing billboards for his own use on his own land did not need to be licensed as a contractor, as such person did not "undertake" to construct, alter, repair, add to or improve anything within

the meaning of that section. "Undertakes" as used in the statutory definition of "contractor," necessarily meant "undertakes with another," and did not include work done by a person alone for his own uses. 1966 Op. Att'y Gen. No. 66-24.

Bowling alley, related fixtures subject to regulation. — Bowling alleys and fixtures related thereto, as in the installation of a bar, are fabricated into a building under a performance contract and for a lump sum and are not considered to be personality; therefore, the operation in question is subject to regulation under the former act. 1957-58 Op. Att'y Gen. No. 58-155.

Mere moving of completed structure is not included under laws applied to contractors' licensing. 1953-54 Op. Att'y Gen. No. 53-5653.

When completion and moving of house included. — In the event a house had been wholly constructed elsewhere and moved to the site, the person so moving and setting the house upon the site was not within the provisions of the Contractors' Licensing Law (now repealed). In the event the prefabrication took place in sections and the house or structure was completed on the site, then the persons completing it, if all the other provisions of the law were applicable were under the former law pertaining to the contractors' licensing board (now abolished). 1953-54 Op. Att'y Gen. No. 53-5653.

Sale of prefabricated structure not included. — In view of the rule requiring strict interpretation of licensing statutes, a person who sells prefabricated structures is in no way included in the terms and provisions of the former Contractors' Licensing Law, whether he sells the structure delivered on the building site or whether the structure is sold F.O.B. manufacturer's plant. 1953-54 Op. Att'y Gen. No. 53-5653.

Installation of turbine water well pump. — A person who installs a turbine water well pump need not obtain a contractor's license. 1988 Op. Att'y Gen. No. 88-28.

Prospect and contract miners not subject to act. — Generally speaking, the term "project" is not specifically applicable to prospect or development mining operations, but more recognizable as used in commercial or domestic realty terminology; accordingly, under former law, prospect and contract miners were not subject to this act. 1957-58 Op. Att'y Gen. No. 57-105.

Agency or political subdivision of state not covered under former law. — Under former 67-16-3, 1953 Comp. of the Contractors' License Law, an agency or political subdivision of the state was not required to have a contractor's license for any classification as set forth in the rules and regulations of that law. That section confined the necessity for securing licenses to "any person, firm, co-partnership, corporation, association or other organization, or any combination thereof." Neither the state, its agencies or political subdivisions were mentioned in this list of business entities. Furthermore, the state could not be included in any of such business entities because the state was a body politic and not an association, society or corporation. Thus, the contractors' license board (now abolished) had no authority to license a water or soil conservation district in New Mexico. 1966 Op. Att'y Gen. No. 66-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Who is a "contractor" within statutes requiring the licensing of, or imposing a license tax upon, a "contractor" without specifying the kinds of contractors involved, 19 A.L.R.3d 1407.

53 C.J.S. Licenses § 34.

60-13-3.1. Employer and employee relationship; independent contractor; improper reporting; penalty; license sanctions.

A. Except as provided in Subsection D of this section, for purposes of the employer and employee relationship within those construction industries subject to the Construction Industries

Licensing Act, a contractor who is an employer shall consider a person providing labor or services to the contractor for compensation to be an employee of the contractor and not an independent contractor unless the following standards indicative of an independent contractor are met:

(1) the person providing labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(2) the person providing labor or services is responsible for obtaining business registrations or licenses required by state law or local ordinance for the person to provide the labor or services;

(3) the person providing labor or services furnishes the tools or equipment necessary to provide the labor or services;

(4) the person providing labor or services has the authority to hire and fire employees to perform the labor or services;

(5) payment for labor or services is made upon completion of the performance of specific portions of a project or is made on the basis of a periodic retainer; and

(6) the person providing labor or services represents to the public that the labor or services are to be provided by an independently established business. A person is engaged in an independently established business when four or more of the following circumstances exist:

(a) labor or services are primarily performed at a location separate from the person's residence or in a specific portion of the residence that is set aside for performing labor or services;

(b) commercial advertising or business cards are purchased by the person, or the person is a member of a trade or professional association;

(c) telephone or email listings used for the labor or services are different from the person's personal listings;

(d) labor or services are performed only pursuant to a written contract;

(e) labor or services are performed for two or more persons within a period of one year; or

(f) the person assumes financial responsibility for errors and omissions in labor or services as evidenced by insurance, performance bonds and warranties relating to the labor or services being provided.

B. The labor department shall administer and enforce the provisions of Subsection A of this section, including coordination with the construction industries division of the regulation and licensing department.

C. A contractor who intentionally and willfully reports to a state agency or other client that an employee is an independent contractor or who, for the purposes of a program administered by a state agency, intentionally and willfully treats or otherwise lists an employee as an independent contractor when the employee's status does not meet the standards indicative of an independent contractor as identified in Subsection A of this section is guilty of a misdemeanor and shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for a definite term not to exceed six months or both. For the purposes of this subsection, "state agency" means an administration, board, commission, department or division of this state.

D. Conviction of a contractor for violating Subsection C of this section shall be grounds for the construction industries commission to take action to suspend, revoke or refuse to renew a license issued to that contractor by the construction industries division of the regulation and licensing department.

E. Subsections A, B and C of this section shall not be construed to affect or apply to a common law or statutory action providing for recovery in torts and shall not be construed to affect or change the common law interpretation of independent contractor status as it relates to tort liability.

History: Laws 2005, ch. 94, § 1.

Effective dates. — Laws 2005, ch. 94 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

Compiler's notes. — This section was not enacted as part of the Construction Industries Licensing Act but has been compiled here for the convenience of the user.

ANNOTATIONS

Contractor must have a license. — The classification of an individual who qualifies as a contractor under the definition of "contractor" in the Construction Industries Licensing Act and as an employee under Section 60-13-3.1 NMSA 1978 does not exempt the individual from the licensing requirements of the Construction Industries Licensing Act. *Reule Sun Corp. v. Valles*, 2010-NMSC-004,

147 N.M. 512, 226 P.3d 611, *rev'g* 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197 and *overruling* *Latta v. Harvey*,

1960-NMSC-046, 67 N.M. 72, 352 P.2d 649 and *Campbell v. Smith*, 1961-NMSC-059, 68 N.M. 373, 362 P.2d 523,

60-13-4. Recompile.

Recompilations. — Laws 1989, ch. 6, § 2 recompiles 60-13-4 NMSA 1978, relating to purpose of the Construction

Industries Licensing Act, as 60-13-1.1 NMSA 1978, effective July 1, 1989.

60-13-5. Repealed.

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-5 NMSA 1978, as enacted by Laws 1974, ch. 78, § 33,

relating to criminal offender's character evaluation, effective July 1, 1989.

60-13-6. Construction industries commission created; membership; duties.

A. There is created within the division the "construction industries commission". The commission shall be composed of nine voting members who shall serve at the pleasure of the governor. Members shall be appointed by the governor, with the advice and consent of the senate, as follows:

- (1) one member who is a representative of the residential construction industry of this state;
- (2) one member who is a licensed electrical contractor;
- (3) one member who is a licensed mechanical contractor;
- (4) one member who is a licensed and practicing architect;
- (5) one member who is a practicing general contractor;
- (6) one member who is a representative of the liquefied petroleum gas industry;
- (7) one member who is a resident of the state, who is not a licensed contractor or certified journeyman and who shall represent the people of New Mexico;
- (8) one member who is a representative of the subcontracting industry of the state; and
- (9) one member who is a representative of organized labor.

Members shall be appointed to provide adequate representation of all geographic areas of the state.

B. Each member of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

C. The commission shall annually elect a chair and vice chair from its membership. The director shall serve as the executive secretary of the commission.

D. The commission shall meet bimonthly or at the call of the chair.

E. The commission shall establish policy for the division. It shall advise on, review, coordinate and approve or disapprove all rules, standards, codes and licensing requirements that are subject to the approval of the commission under the provisions of the Construction Industries Licensing Act or the LPG and CNG Act [70-5-2 NMSA 1978] so as to ensure that uniform codes and standards are promulgated and conflicting provisions are avoided. However, the commission shall not enact a bylaw, order, building code, policy or rule requiring the installation of a residential fire protection sprinkler system in detached one- and two-family dwellings and multiple single-family dwellings, such as townhouses that are not more than three stories above grade plane in height and that have a separate means of egress and their accessory structures. The commission shall:

- (1) revoke or suspend, for cause, any license or certificate of qualification issued under the provisions of the Construction Industries Licensing Act or the LPG and CNG Act; and
- (2) define and establish all license classifications. The licensee shall be limited in bidding and contracting as provided in Subsection B of Section 60-13-12 NMSA 1978. A licensee, subsequent to the issuance of a license, may make application for additional classification and be licensed in more than one classification if the licensee meets the prescribed qualification for the additional classification.

History: 1953 Comp., § 67-35-4.2, enacted by Laws 1977, ch. 245, § 168; 1983, ch. 105, § 2; 1989, ch. 6, § 5; 2011, ch. 169, § 1.

Cross references. — For termination of commission, see 60-13-58 NMSA 1978.

The 2011 amendment, effective June 17, 2011, exempted residential fire protection sprinkler systems from regulation by the commission.

60-13-7. Construction industries division; director; appointment and qualifications.

The superintendent of regulation and licensing shall appoint the director of the division, who shall be a person who meets at least one of the following qualifications:

- A. is or has been an active practicing construction contractor for at least five years;
- B. is or has been an employee in an administrative position of a construction company for at least five of the past ten years;
- C. has been employed by the construction industries division for at least five years and is knowledgeable in the administration of the law governing the construction industries division; or
- D. is or has been actively engaged for at least five of the past ten years in an administrative position of an organization which requires that person to have a broad knowledge of the construction industry.

History: 1953 Comp., § 67-35-4.3, enacted by Laws 1977, ch. 245, § 169; 1989, ch. 6, § 6.

Cross references. — For termination of division, see 60-13-58 NMSA 1978.

For appointment of director, see 9-16-7 NMSA 1978.

60-13-8. Division; employees; equipment and supplies.

A. The division shall employ personnel, procure equipment and supplies and assemble records as necessary to carry out the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978].

B. Any person employed or placed under contract by the division or by any county or municipality for the purpose of carrying out the provisions of the Construction Industries Licensing Act who holds any contractor's license or certificate of competence issued by the division, shall, as a condition of employment surrender the contractor's license or certificate of competence to the division to be held in inactive status. The division shall place the license or certificate on hold effective from the date the employment or contract begins until the date the employment or contract terminates. The license or certificate shall remain in effect after the hold period for the same number of days as it would have remained in effect but for the hold.

History: 1953 Comp., § 67-35-12, enacted by Laws 1967, ch. 199, § 12; 1977, ch. 245, § 170; 1987, ch. 283, § 2.

ANNOTATIONS

Building inspector. — City building inspector who inspected building held to have qualified immunity for

equal protection claim, but issue raised as to whether inspector had qualified immunity for fourth amendment and first amendment claims. *Mimics, Inc. v. Village of Angel Fire*, 277 F. Supp. 2d 1131 (D.N.M. 2003), *aff'd in part, rev'd in part*, *Mimics, Inc. v. Vill. of Angel Fire*, 394 F.3d 836 (10th Cir. 2005).

60-13-8.1. Construction industries division publications revolving fund created; appropriation.

The "construction industries division publications revolving fund" is created. All money collected by the division from the sale of publications and information related to the licensing and regulatory provisions of and issues arising under the Construction Industries Licensing Act [this article] and regulations adopted pursuant to that act shall be deposited with the state treasurer to be credited to the fund. Money in the fund is appropriated to the division. Money in the fund shall be used only for printing and maintenance of publications and information related to the licensing and regulatory provisions of and issues arising under the Construction Industries Licensing Act and regulations adopted pursuant to that act. Disbursements from the fund shall be made by

warrants signed by the secretary of finance and administration, based upon vouchers signed by the director and only in accordance with a budget approved by the department of finance and administration. Money in the fund shall not revert at the end of the fiscal year.

History: Laws 1997, ch. 181, § 9.

60-13-9. Division; duties.

The division shall:

- A. approve and adopt examinations on codes and standards, business knowledge, division rules and regulations and on the Construction Industries Licensing Act recommended by the commission for all classifications of contractor's licenses;
- B. issue, under the director's signature, contractor's licenses and certificates of qualification in accordance with the provisions of the Construction Industries Licensing Act;
- C. submit a list of all contractor's licenses, statewide inspector's certificates and certificates of qualification issued by the division to the commission for review and approval;
- D. resolve jurisdictional conflicts by assigning specific responsibility to the appropriate bureau for preparing examinations and for certifying and inspecting each occupation, trade or activity covered by the Construction Industries Licensing Act;
- E. establish and collect fees authorized to be collected by the division pursuant to the Construction Industries Licensing Act;
- F. adopt all building codes and minimum standards as recommended by the trade bureaus and approved by the commission so that the public welfare is protected, uniformity is promoted and conflicting provisions are avoided;
- G. with approval of the superintendent of regulation and licensing, employ such personnel as the division deems necessary for the exclusive purpose of investigating violations of the Construction Industries Licensing Act, enforcing Sections 60-13-12 and 60-13-38 NMSA 1978 and instituting legal action in the name of the division to accomplish the provisions of Section 60-13-52 NMSA 1978;
- H. approve, disapprove or revise the recommended budget of each trade bureau and submit the budgets of those bureaus, along with its own budget, to the regulation and licensing department;
- I. approve, disapprove or revise and submit to the regulation and licensing department all requests of the trade bureaus for emergency budget transfers;
- J. make an annual report to the superintendent of regulation and licensing and develop a policy manual concerning the operations of the division and the trade bureaus. The report shall also contain the division's recommendations for legislation it deems necessary to improve the licensing and technical practices of the construction and LP gas industries and to protect persons, property and agencies of the state and its political subdivisions;
- K. adopt, subject to commission approval, rules and regulations necessary to carry out the provisions of the Construction Industries Licensing Act and the LPG and CNG Act [Chapter 70, Article 5 NMSA 1978];
- L. maintain a complete record of all applications; all licenses issued, renewed, canceled, revoked and suspended; and all fines and penalties imposed by the division or commission and may make that information available to certified code jurisdictions;
- M. furnish, upon payment of a reasonable fee established by the division, a certified copy of any license issued or of the record of the official revocation or suspension thereof. Such certified copy shall be prima facie evidence of the facts stated therein; and
- N. publish a list of contractors, with their addresses and classifications, licensed by the division. The list shall be furnished without charge to such public officials, public bodies or public works and building departments as the division deems advisable. The list shall be published annually, and supplements shall be provided as the division deems necessary. Copies of the list and supplements shall be furnished to any person upon request and payment of a reasonable fee established by the division.

History: 1953 Comp., § 67-35-13, enacted by Laws 1978, ch. 73, § 1; 1983, ch. 105, § 3; 1985, ch. 70, § 1; 1989, ch. 6, § 7; 2013, ch. 142, § 2; 2013, ch. 153, § 2.

Repeals and reenactments. — Laws 1978, ch. 73, § 1, repealed former 67-35-13, 1953 Comp. (former 60-13-9 NMSA 1978), as amended by Laws 1977, ch. 377,

§ 2, relating to duties, and enacted a new 67-35-13, 1953 Comp.

Cross references. — For the superintendent of regulation and licensing, see 9-16-5 NMSA 1978.

The 2013 amendment, effective June 14, 2013, required the division to submit a list of statewide inspector's certificates; in Subsection C, after "contractor's licenses", added "statewide inspector's certificates"; and in Subsection K, after "LPG", added "and CNG".

Laws 2013, ch. 142, § 2, and Laws 2013, ch. 153, § 2, both effective June 14, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 153, § 2. See 12-1-8 NMSA 1978.

ANNOTATIONS

Conversion of individual units in apartment building to condominium would not require new building codes be applied to the same buildings, if the apartment building met all applicable building codes when constructed. In that case, the sale of the building as residential condominium units would not require the construction industries commission (now construction industries division) to enforce the most current building code which may incorporate more stringent requirements. 1978 Op. Att'y Gen. No. 78-18.

60-13-10. Additional division duties; flood or mudslide areas; standards.

In addition to the division's other duties, on or before January 1, 1976 the division shall, with the approval of the commission, issue regulations prescribing standards for the installation or use of electrical wiring, the installation of fixtures, plumbing, consumers' gas pipe and appliances and materials installed in the course of mechanical installation and the construction, alteration or repair of all buildings, improvements, modular homes, premanufactured homes and manufactured commercial units intended for use in flood or mudslide areas designated pursuant to Section 3-18-7 NMSA 1978. Such regulations shall give due regard to standards prescribed by the federal insurance administration pursuant to Regulation 1910, Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 575, all as amended, and shall give due regard to physical, climatic and other conditions peculiar to New Mexico.

History: 1953 Comp., § 67-35-13.1, enacted by Laws 1975, ch. 14, § 3; 1975, ch. 331, § 17; 1977, ch. 245, § 172; 1983, ch. 105, § 4; 1989, ch. 6, § 8.

Compiler's notes. — Federal Regulation 1910, referred to in the second sentence, appears as 44 C.F.R. § 60.1 et seq.

60-13-10.1. Division; additional duties; alcohol fuel plant construction code; rules and regulations.

A. In addition to the division's other duties, on or before January 1, 1982 it shall, with the approval of the commission and after public hearing, adopt an alcohol fuel plant construction code. The code shall set forth reasonable standards and requirements for the construction, alteration or repair of buildings and other structures to be used for the manufacture or distillation of alcohol fuel. In adopting the code, the division shall give due regard to the purpose for which the plant is to be used and to the physical, climatic and other conditions peculiar to New Mexico.

B. Upon the adoption of the code, the commission shall make rules and regulations pertaining to the issuance of a permit prior to any construction, installation, alteration, repair or addition to or within any building or structure proposed for the use of manufacturing or distillation of alcohol fuel. The commission shall also set a reasonable fee for the issuance of a permit.

C. No permit shall be required of any person who, by himself or with the aid of others who are paid wages and receive no other form of compensation, builds or makes installation, repairs or alterations on a farm or ranch owned, occupied or operated by him to any building or structure for the use of manufacturing or distillation of alcohol fuel.

History: 1978 Comp., § 60-13-10.1, enacted by Laws 1981, ch. 245, § 1; 1989, ch. 6, § 9.

60-13-10.2. Division and commission; standards to accommodate solar collectors.

As provided in the Solar Collector Standards Act [71-6-4 through 71-6-10 NMSA 1978], the division and commission shall promulgate rules to establish a uniform procedure for the issuance of

permits for the construction and installation of solar collectors and to identify the trade bureau having jurisdiction over the construction and installation of solar collectors.

History: Laws 2007, ch. 38, § 6; 2013, ch. 142, § 2; 2013, ch. 86, § 1.

The 2013 amendment, effective June 14, 2013, authorized the division and commission to issue rules to establish uniform procedures for issuance of permits; after "the division and commission shall", deleted "jointly with

the energy, minerals and natural resources department"; and after "promulgate", deleted "rules, standards or codes that establish requirements for new construction that will accommodate the installation of solar collectors to or in the new construction after the construction is otherwise complete" and added the remainder of the sentence.

60-13-10.3. Equal access to public baby changing facilities.

A. No later than January 1, 2020, the division shall develop and adopt rules governing baby changing facilities for restrooms in a place of public accommodation.

B. A place of public accommodation shall provide a baby changing facility in each restroom located in the place of public accommodation under the following circumstances:

- (1) when there is construction of a new restroom; and
- (2) to the extent it may be implemented in compliance with local, state and federal laws regarding access for persons with disabilities and with existing fire, health and safety standards.

C. The requirements of Subsection B of this section shall not apply to a restroom in a place of public accommodation that:

- (1) is not available or accessible for public use; or
- (2) contains clear and conspicuous signage indicating where a restroom with a baby changing facility is located on the same floor of such place of public accommodation.

D. All drawings, specifications and other submittal documents as to new construction of a place of public accommodation shall incorporate the requirements of this section when submitted to the appropriate authority having jurisdiction for plan review. The authority having jurisdiction shall not approve drawings and submittal documents for new construction of a place of public accommodation unless drawings, specifications and other submittal documents comply with the provisions of this section. No certificate of occupancy shall be issued for new construction of a place of public accommodation unless fully compliant with the provisions of this section.

E. This section shall not be construed to create a private right of action for failure to comply with the provisions of this section or rules adopted in accordance with this section.

F. As used in this section:

(1) "authority having jurisdiction" means the state or a municipality, county or other political subdivision that has a full-service building department employing a full-time certified building official and has permitting, inspection and enforcement authority over the general construction, electrical and mechanical-plumbing trades within its jurisdiction;

(2) "baby changing facility" means a table or other device suitable for changing the diaper of a child age three or under;

(3) "department" means the regulation and licensing department;

(4) "division" means the construction industries division of the regulation and licensing department; and

(5) "public accommodation" means:

(a) an inn, hotel, motel or other place of lodging except for an establishment that is located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as a residence;

(b) a restaurant, bar or other establishment serving food or drink;

(c) a motion picture house, theater, concert hall, stadium or other place of exhibition or entertainment;

(d) an auditorium, convention center, lecture hall or other place of public gathering;

(e) a bakery, grocery store, clothing store, shopping center or other sales or rental establishment;

(f) a laundromat, bank, barber shop, beauty shop, travel service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital or other service establishment;

- (g) a terminal, depot or other station used for public transportation;
- (h) a museum, library, gallery or other place of public display or collection;
- (i) a park, zoo, amusement park or other place of recreation;
- (j) a nursery, elementary, secondary, undergraduate or postgraduate school or other place of education;
- (k) a daycare center, senior citizen center, homeless shelter, food bank, adoption agency or other social service center establishment; and
- (l) a gymnasium, health spa, bowling alley, golf course or other place of exercise or recreation.

History: Laws 2019, ch. 105, § 1.

Compiler's notes. — Laws 2019, ch. 105, § 1 was not enacted as part of the Construction Industries Licensing Act, but was compiled there for the convenience of the user.

Effective dates. — Laws 2019, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

60-13-11. Division or commission; powers.

The division or the commission may:

- A. sue and be sued, issue subpoenas and compel the attendance of witnesses and the production of documents, records and physical exhibits in any hearing;
- B. administer oaths;
- C. adopt and use a seal for authentication of its records, processes and proceedings;
- D. compel minimum code compliance in all certified code jurisdictions and political subdivisions; and
- E. investigate code violations in any code jurisdictions in New Mexico.

History: 1953 Comp., § 67-35-14; enacted by Laws 1967, ch. 199, § 14; 1977, ch. 245, § 173; 1989, ch. 6, § 10.

ANNOTATIONS

Enforcement of state building code. — The construction industries division of the regulation and licensing department has the authority to refuse to provide inspection services or certify local inspectors in municipalities that fail to adopt a building code that provides for minimum requirements of the state Uniform Building Code. The construction industries division has the authority to issue a stop work or similar order on a construction project authorized by a local jurisdiction that has adopted a building code that, while the code meets minimum

standards set by the CID, differs from the building code adopted by CID. 2011 Op. Att'y Gen. No. 11-06.

Use of appropriated funds under former law. — The contractors' license board (now abolished) may not spend money from the appropriated funds for the construction of a block wall contingent upon the board's failure to exercise the right of option to purchase said property. 1957-58 Op. Att'y Gen. No. 58-117.

The contractors' license board (now abolished) may not contract to spend appropriated funds budgeted for maintenance of buildings and structures, for improvement or permanent changes to be made upon its leased premises. 1957-58 Op. Att'y Gen. No. 58-117.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 152 et seq.

60-13-12. Contractor's license required.

A. No person shall act as a contractor without a license issued by the division classified to cover the type of work to be undertaken.

B. No bid on a contract shall be submitted unless the contractor has a valid license issued by the division to bid and perform the type of work to be undertaken; provided this subsection shall not prohibit a licensed contractor from bidding or contracting work involving the use of two or more trades, crafts or classifications if the performance of the work in the trades, crafts or classifications other than the one in which he is licensed is incidental or supplemental to the performance of the work in the trades, crafts or classifications for which he is licensed; and further provided that work coming under the jurisdiction of the mechanical bureau or the electrical bureau of the division must be performed by a contractor licensed to perform that work.

C. Any contractor may bid on a New Mexico highway project involving the expenditure of federal funds prior to making application to the division for a license. The contractor, if he has not previously been issued a license, shall upon becoming the apparent successful bidder apply to the division for a license. The director shall issue a license to the contractor in accordance with the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978].

History: 1953 Comp., § 67-35-15, enacted by Laws 1967, ch. 199, § 15; 1969, ch. 224, § 5; 1977, ch. 245, § 174; 1983, ch. 105, § 5; 1989, ch. 6, § 11.

ANNOTATIONS

Contractor must have a license. — An individual who qualifies as a contractor under the definition of "contractor" in the Construction Industries Licensing Act is required to have a contractor's license when performing the specific acts described in the Construction Industries Licensing Act, regardless of whether the individual can be classified as an employee of a licensed contractor under the common law control test. *Reule Sun Corp. v. Valles*, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, *rev'g* 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197, *overruling* *Latta v. Harvey*, 1960-NMSC-046, 67 N.M. 72, 352 P.2d 649 and *Campbell v. Smith*, 1961-NMSC-059, 68 N.M. 373, 362 P.2d 523.

Common law control test does not apply. — The common law control test for determining whether an individual is an employee does not apply to determine whether an individual is required to have a license under the Construction Industries Licensing Act. An unlicensed contractor's classification as an employee of a licensed contractor under the common law control test does not exempt the unlicensed contractor from the licensing requirements of the Construction Industries Licensing Act. *Reule Sun Corp. v. Valles*, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, *rev'g* 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197, *overruling* *Latta v. Harvey*, 1960-NMSC-046, 67 N.M. 72, 352 P.2d 649 and *Campbell v. Smith*, 1961-NMSC-059, 68 N.M. 373, 362 P.2d 523.

Construction work performed by an employee contractor. — Where a licensed general contractor employed an unlicensed individual to stucco defendants' home; the general contractor did not pay the individual a salary, but on a contract-to-contract basis; the general contractor did not withhold taxes from the individual's compensation; the individual had tax identification numbers and paid the individual's own taxes; and the individual performed the work under the complete direction and control of the general contractor, the individual was a contractor under the Construction Industries Licensing Act and was required to possess a contractor's license to perform the work. *Reule Sun Corp. v. Valles*, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, *rev'g* 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197, *overruling* *Latta v. Harvey*, 1960-NMSC-046, 67 N.M. 72, 352 P.2d 649 and *Campbell v. Smith*, 1961-NMSC-059, 68 N.M. 373, 362 P.2d 523.

Purpose. — The purpose of the former Contractors' License Law was to require licensing of those engaged in the contracting business to protect the public from unqualified contractors. *Cancienne, Inc. v. Southwest Cmty. Inns, Inc.*, 1969-NMSC-110, 80 N.M. 512, 458 P.2d 587.

Licensed contractors only. — Reading the Procurement Code, Section 13-1-28 NMSA 1978 et seq., and the Construction Industries Licensing Act, Chapter 60, Article 13 NMSA 1978, together, it is clear that the legislature intended (1) that public contracts should be awarded only to licensed contractors and (2) that purchasing authorities should be relieved from the necessity of making an independent investigation into the qualifications and fiscal responsibility of a contractor who is not licensed at the time of bidding. Thus, the doctrine of substantial compliance does not apply to the requirement of Section 60-13-12B NMSA 1978 that a contractor have a valid license when submitting a bid on a public contract. *BC&L Pavement Servs., Inc. v. Higgins*, 2002-NMCA-087, 132 N.M. 490, 51 P.3d 533.

Transfer of license between contractor and subcontractor prohibited. — This article requires both a contractor and subcontractor to be licensed and prohibits transferring a license or certificate of qualification to

another. *State v. Jenkins*, 1989-NMCA-044, 108 N.M. 669, 777 P.2d 908.

Having an electrical contractor's license did not exempt party from requirements of the former Contractors' License Law. An action is barred under 67-16-14, 1953 Comp. (now repealed), because of the lack of a contractor's license. *Chavas v. Esper*, 1966-NMSC-169, 76 N.M. 666, 417 P.2d 802.

License required in partnership name. — Former Contractors' License Law (67-16-1, 1953 Comp. et seq.) (now repealed), and the rules and regulations issued pursuant thereto, compel partnerships required to be licensed to hold a license in the partnership name. *Crumppacker v. Adams*, 1967-NMSC-060, 77 N.M. 633, 426 P.2d 781.

The admission of a person as a partner with a licensed contractor required the issuance of a new contractor's license to the partnership under former law. *Nickels v. Walker*, 1964-NMSC-177, 74 N.M. 545, 395 P.2d 679.

Type of work to be covered by license. — No person shall engage in business of a contractor unless the construction industries commission (division) has issued him a license which covers the type of work to be undertaken. *Peck v. Ives*, 1972-NMSC-053, 84 N.M. 62, 499 P.2d 684.

Work done within ambit of party's license. — Defendant's contention that plaintiff's action was barred by 67-16-6 and 67-16-17 1953 Comp. (now repealed), for failure of plaintiff to have contractor's license to perform the work he did was without merit, as plaintiff had a contractor's license which authorized him to do excavating, trenching, welding, water supply, sewage, including disposal and gas lines and the work done involved the cutting and threading of steel braces and welding said braces to steel plates, which fell within that part of plaintiff's contractor's license which authorized plaintiff to contract welding work. *Dunsan Contractors v. Koury*, 1966-NMSC-138, 76 N.M. 723, 418 P.2d 66.

Contractor when promise to mine and move copper ore. — A party who contracts to "perform certain mining work on copper siliceous ores" and to "pay for all labor, work, mining expenses, material, explosives and moving commercial copper ores to specified stockpile location" is a contractor within the terms of 67-16-3, 1953 Comp. (now repealed). *Salter v. Kindom Uranium Corp.*, 1960-NMSC-040, 67 N.M. 34, 351 P.2d 375.

Employee, not independent contractor, when performance controlled. — Where plaintiff was hired by defendant for drilling purposes, and where defendant retained at all times right of control of performance of the work as well as right to direct manner in which the work would be done, the plaintiff was an employee, not an independent contractor and was not barred from recovery under 67-16-3 and 67-16-14, 1953 Comp. (now repealed), for failure to obtain a contractor's license. *Latta v. Harvey*, 1960-NMSC-046, 67 N.M. 72, 352 P.2d 649.

Agent not personally liable for principal. — This act does not alter the general rule that an agent is not liable on a contract the agent enters into on behalf of a disclosed principal, even if the principal does not possess a contractor's license and the agent does. *Kreischer v. Armijo*, 1994-NMCA-118, 118 N.M. 671, 884 P.2d 827.

License required maintenance of contract breach action. — Where the work performed was fabricating materials or supplies or using the same in the performance of contracting work and electrical installation, a contractor's license was required under former Contractors' License Law and therefore plaintiff could not maintain an action for breach of contract. *Cancienne, Inc. v. Southwest Cmty. Inns, Inc.*, 1969-NMSC-110, 80 N.M. 512, 458 P.2d 587.

Establishment of necessity for license required before action barred. — Defendant, seeking to prohibit an unlicensed contractor from maintaining an action, was

required to establish that plaintiff was required by 67-16-2, 1953 Comp. (now repealed), to be licensed. *Crumppacker v. Adams*, 1967-NMSC-060, 77 N.M. 633, 426 P.2d 781.

No quantum meruit recovery where license required. — One who has shown himself to be required to have contractor's license cannot recover under quantum meruit in absence of such license. *Campbell v. Smith*, 1961-NMSC-059, 68 N.M. 373, 362 P.2d 523, *overruled on other grounds by Sundance Mech. & Util. Corp. v. Atlas*, 1990-NMSC-031, 109 N.M. 683, 789 P.2d 1250.

Allegation of contractor's license treated as tried with parties' consent. — Where appellants made no objection to evidence of contractor's license and raised neither the jurisdiction nor the limitation question at trial, and requested no findings on either question, requirement of allegation of contractor's license was matter of public policy and did not, otherwise, bear any relation to the cause of action; and appellant cannot object to appellate court treating issue tried with consent of the parties as though it had been raised by pleadings. *Daughtrey v. Carpenter*, 1970-NMSC-151, 82 N.M. 173, 477 P.2d 807.

Evidence as to license. — Evidence of certain receipts and decals issued by licensing authority to plaintiff, along with plaintiff's own testimony that he was licensed, constitutes acceptable evidence, especially when it is joined with testimony from an official of the New Mexico construction industries commission (division), the agency which now licenses contractors, that plaintiff had been licensed at all pertinent times. *Kennedy v. Lynch*, 1973-NMSC-085, 85 N.M. 479, 513 P.2d 1261.

"Best evidence rule" not applicable to proof of license. — It is plaintiff's licensed status which must be proved and not contents of particular document; therefore, "best evidence rule" or Rule 1002, N.M.R. Evid. (now see Rule 11-1002), does not apply. *Kennedy v. Lynch*, 1973-NMSC-085, 85 N.M. 479, 513 P.2d 1261.

Same person shall not be designated as supervisor in more than one electrical contractor's license. 1961-62 Op. Att'y Gen. No. 62-77.

Use of unlicensed persons for plumbing and irrigating systems. — Under former law, the New Mexico school for the deaf could employ unlicensed persons for making installation of plumbing in the buildings of a dairy farm located in an unpopulated area; also, an irrigating system could be installed without regard to the licensing requirements of 67-22-2, 1953 Comp., and connections could be made to water tanks, troughs, etc., by licensed plumbers. 1959-60 Op. Att'y Gen. No. 59-61.

Municipality's licensing and regulating rights taken away. — Right of a municipality to both license and regulate resident and nonresident contractors has been taken away by the comprehensive nature of the Construction Industries Licensing Act except in certain minor respects. 1969 Op. Att'y Gen. No. 69-72.

Prior contractors', etc., licenses supplanted. — The Construction Industries Licensing Act provides for issuance of a contractor's license which supplants all prior contractors', plumbers' and electricians' licenses. 1969 Op. Att'y Gen. No. 69-72.

Requirements of electrical contractor's license under former law. — When a business, regardless of the nature of its organization (partnership, corporation, etc.) is formed with the intention of entering into the electrical contracting business, it should obtain an electrical contractor's license by written application stating the name of the business designated as holder and the qualified person named as supervisor. The supervisor must be the master electrician. 1961-62 Op. Att'y Gen. No. 62-77.

Persons, etc., contracting on percentage basis covered by former law. — The contractors' license board (now abolished) could license persons, firms, partnerships and corporations that were contractors on a percentage basis and, otherwise were within the coverage of 67-16-2, 1953 Comp. (now repealed). Agents and employees of contractors needed no license, even though they were employed on a percentage basis. 1961-62 Op. Att'y Gen. No. 62-04.

Salesmen taking orders for remodeling on behalf of licensed building concerns were not required to be licensed by the contractors' license board (now abolished). 1961-62 Op. Att'y Gen. No. 62-04.

Special license not required for general contractor. — A general contractor for construction of homes and other buildings, but who was not specially licensed as a painter or decorator contractor, was not required by 67-16-17, 1953 Comp. (now repealed), to subcontract the painting and decorating, as his license as a general contractor enabled him to do the painting or hire help to do it for him. 1959-60 Op. Att'y Gen. No. 59-67.

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Building and Construction Contracts §§ 130, 131; 51 Am. Jur. 2d Licenses and Permits §§ 4, 16; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 63 to 75, 90 to 98, 129, 132, 133.

Requiring procurement of license by heating contractors, 33 A.L.R. 146.

Plumbers, provisions as to licensing, 36 A.L.R. 1342, 22 A.L.R.2d 816.

Municipal regulation of electricians and the installation of electrical work, 96 A.L.R. 1506.

Validity, construction and application of regulations of business of building or construction contractors, 118 A.L.R. 676.

Validity, construction and application of license regulations as to masons, plasterers, painters and paperhangers, 123 A.L.R. 471.

What constitutes plumbing or plumbing work within statute or ordinance requiring license for such work, 125 A.L.R. 718.

Validity of regulations as to plumbers and plumbing, 22 A.L.R.2d 816.

Failure of building and construction artisan or contractor to procure business or occupational license as affecting enforceability of contract or right to recover for work done - modern cases, 44 A.L.R.4th 271.

53 C.J.S. Licenses § 34.

60-13-13. Application for contractor's license.

A. Applications for a contractor's license or a certificate of qualification shall be submitted to the division on forms prescribed and furnished by the division and shall contain the information and be accompanied by the attachments required by regulation of the commission.

B. Except as provided in Section 4 [60-13-14.1 NMSA 1978] of this 2021 act, the application shall be accompanied by the prescribed fee.

History: 1953 Comp., § 67-35-16, enacted by Laws 1967, ch. 199, § 16; 1977, ch. 245, § 175; 1989, ch. 6, § 12; 2021, ch. 92, § 5.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided for the waiver of license and certificate fees for military service members and veterans; and in Subsection B, added "Except as provided in Section 4 of this 2021 act".

60-13-13.1. Repealed.

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-13.1 NMSA 1978, as enacted by Laws 1979, ch. 107, § 1,

relating to supplemental licenses and fees for general building contractors, effective July 1, 1989.

60-13-13.2. Licensees; identical or similar names.

The division shall not accept an application, shall not issue a license and shall require a change in the name of a proposed license if the proposed name is identical to or in the opinion of the director so similar that it may cause confusion with a name on a pending application or an existing license. Any person aggrieved by the decision of the director may appeal the decision to the commission.

History: 1978 Comp., § 60-13-13.2, enacted by Laws 1983, ch. 105, § 6; 1989, ch. 6, § 13.

60-13-14. Division; license issuance; reports.

A. No license shall be issued by the division to any applicant unless the director is satisfied that the applicant is or has in his employ a qualifying party who is qualified for the classification for which application is made and the applicant has satisfied the requirements of Subsection B of this section.

B. An applicant for a license shall:

- (1) demonstrate proof of responsibility as provided in the Construction Industries Licensing Act [this article];
- (2) comply with the provisions of Subsection D of this section if he has engaged illegally in the contracting business in New Mexico within one year prior to making application;
- (3) demonstrate familiarity with the rules and regulations promulgated by the commission and division concerning the classification for which application is made;
- (4) if a corporation, incorporated association, registered limited liability partnership or limited liability company, have complied with the laws of this state requiring qualification to do business in New Mexico and provide the name of its current registered agent and the current address of its registered office in New Mexico;
- (5) if a person other than the persons described in Paragraph (4) of this subsection, provide a current physical location address and mailing address of the applicant's place of business;
- (6) submit proof of registration with the taxation and revenue department and submit a current identification tax number;
- (7) comply with any additional procedures, rules and regulations which are established by the commission relating to issuance of licenses; and
- (8) have had four years, within the ten years immediately prior to application, of practical or related trade experience dealing specifically with the type of construction or its equivalent for which the applicant is applying for a license, except that the commission may by regulation provide for:

(a) reducing this requirement for a particular industry or craft where it is deemed excessive but the requirement shall not be less than two years; and

(b) a waiver of the work experience requirement of this paragraph when the qualifying party has been certified in New Mexico with the same license classification within the ten years immediately prior to application.

C. The division, with the consent of the commission, may enter into a reciprocal licensing agreement with any state having equivalent licensing requirements.

D. The director may issue a license to an applicant who at any time within one year prior to making application has acted as a contractor in New Mexico without a license as required by the Construction Industries Licensing Act [60-13-1 NMSA 1978] if:

(1) the applicant in addition to all other requirements for licensure pays an additional fee as follows:

(a) in an amount up to ten percent of the contract price or the value of the nonlicensed contracted work in the discretion of the commission; or

(b) if the applicant has bid or offered a price on a construction project and was not the successful bidder or offeror, the fee shall be at least one percent but not more than five percent of the total bid amount; and

(2) the director is satisfied that no incident of such contracting without a license:

(a) caused monetary damage to any person; or

(b) resulted in an unresolved consumer complaint being filed against the applicant with the division.

E. An unlicensed contractor who has performed unlicensed work may settle the claims against him without becoming licensed if the claims arise from his first offense and he pays an administrative fee calculated pursuant to Paragraph (1) of Subsection D of this section. In addition to the administrative fee, an additional ten percent of the amount of the administrative fee shall be assessed as a service fee.

F. If the total fee to be paid by the contractor pursuant to the provisions of Subsection D or E of this section is twenty-five dollars (\$25.00) or less, the fee may be waived.

G. The director shall report every incident of nonlicensed contracting work to the taxation and revenue department to assure that the contractor complies with tax requirements and pays all taxes due.

History: 1953 Comp., § 67-35-17, enacted by Laws 1967, ch. 199, § 17; 1969, ch. 224, § 6; 1977, ch. 245, § 176; 1977, ch. 377, § 3; 1978, ch. 73, § 2; 1983, ch. 105, § 7; 1985, ch. 18, § 1; 1989, ch. 6, § 14; 1997, ch. 181, § 3.

The 1997 amendment, effective July 1, 1997, rewrote Paragraphs B(4) and B(5); in Paragraph B(8) inserted "except that" and made stylistic changes, including insertion of the subparagraph designations; in Paragraph D(1), substituted "as follows" for "in an amount equal to five percent of the value of such nonlicensed contracting work" and added Subparagraphs (a) and (b); added Subsections E and F; and redesignated former Subsection E as Subsection G.

ANNOTATIONS

When foreign corporation considered to be "maintaining an office". — The hiring of an agent by a foreign corporation for the sole purpose of receiving and

forwarding a summons and complaint to the home office of the corporation located in another state does not fall within any of the generally accepted definitions pertaining to maintaining of an office. An occasional or isolated act of this type by an agent of a foreign corporation is obviously not a part of the continuous, usual and ordinary business of the corporation which, in this case, would be building or construction. A foreign corporation must do something in addition to merely designating a statutory agent for service in order to meet the requirement of "maintaining an office." 1961-62 Op. Att'y Gen. No. 62-90 (rendered under prior law).

Otherwise qualified alien may be issued license. 1959-60 Op. Att'y Gen. No. 60-162.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 45 to 47.

53 C.J.S. Licenses §§ 39, 40.

60-13-14.1. Expedited licensure; military service members, spouses and dependents; veterans; waiver of fees.

A. The division shall, as soon as practicable but no later than thirty days after a military service member or a veteran files an application, and provides a background check if required, for a license or certificate issued pursuant to the Construction Industries Licensing Act accompanied by any required fees:

(1) process the application; and

(2) issue a license prima facie to a qualified applicant who submits satisfactory evidence that the applicant holds a license or certificate that is current and in good standing, issued by another jurisdiction, including a branch of the armed forces of the United States, and has met minimal licensing or certification requirements that are substantially equivalent to the licensing or certification requirements for the license or certificate that the applicant applies for pursuant to the Construction Industries Licensing Act.

B. A license or certificate issued pursuant to this section is not a provisional license and shall confer the same rights, privileges and responsibilities as a license issued pursuant to the Construction Industries Licensing Act.

C. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and the renewal of a license pursuant to the Construction Industries Licensing Act. Upon the issuance of a license pursuant to this section, the division shall notify the license holder of the requirements for renewing the license in writing.

D. Notwithstanding the provisions of Subsection A of this section, a military service member or a veteran who is issued a license pursuant to this section shall not be charged a licensing or certificate fee for the first three years a license or certificate issued pursuant to this section is valid.

E. Upon the conclusion of the state fiscal year, the division shall prepare a report on the number and type of licenses or certificates that were issued during the fiscal year under this section. The report shall be provided to the director of the office of military base planning and support not later than ninety days after the end of the fiscal year.

F. As used in this section:

(1) "military service member" means a person who is:

(a) serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard;

(b) the spouse of a person who is serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard; or a surviving spouse of a member who at the time of death was serving on active duty; or

(c) the child of a person who is serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard; provided that child is also a dependent of that person for federal income tax purposes; and

(2) "veteran" means a person who has received an honorable discharge or separation from military service in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

History: Laws 2021, ch. 92, § 4.

Effective dates. — Laws 2021, ch. 92 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

60-13-15. License issuance; commission review.

A. The commission shall review at its regular meetings all licenses issued by the division. The commission shall report to the superintendent of regulation and licensing and the attorney general any license issued to an applicant who fails to meet the requirements established by law and commission regulations for license issuance.

B. The signing of a license by the director for issuance by the division to an applicant who fails to meet the requirements established by law or committee regulations for issuance of licenses is a misdemeanor, and the director, if convicted by a court of law, shall be relieved of his duties and shall be subject to civil damages as provided in Section 30-23-7 NMSA 1978. Failure by the committee or any member of the committee to report the illegal issuance of a license is a petty misdemeanor and upon conviction shall result in termination of the appointment of the committee member so convicted.

History: 1953 Comp., § 67-35-17.1, enacted by Laws 1977, ch. 245, § 177; 1983, ch. 105, § 8; 1989, ch. 6, § 15.

60-13-16. Division; qualifying party; examination; certificate.

A. Except as otherwise provided in this section, no certificate of qualification shall be issued to an individual desiring to be a qualifying party until he has passed with a satisfactory score an examination approved and adopted by the division.

B. The examination shall consist of a test based on general business knowledge, rules and regulations of the division and the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978]. In addition, applicants for a GB, MM or EE classification or for any other classification that the commission determines to be appropriate shall take a test based on technical knowledge and familiarity with the prescribed codes and minimum standards of the particular classification for which certification is requested. The division shall provide examinations in both English and Spanish.

C. In lieu of the examination to determine knowledge of business and construction industries law provided in Subsection B of this section, an applicant may satisfy the business and law knowledge requirement by receiving a certificate of completion of a business and law course of study offered by an accredited education institute approved by the commission. The course and any preparation and instruction materials shall be available in both English and Spanish and shall be made available to the division, the commission or the designated agent of the division, upon request, for review.

D. If a contractor's license is subject to suspension by the commission and if the suspension is based on the requirement that the licensee employ a qualifying party and the employment of the qualifying party is terminated without fault of the licensee, a member of that trade who is experienced in the classification for which the certificate of qualification was issued and has been employed for five or more years by the licensed contractor shall be issued without examination a temporary certificate of qualification in the classification for which the contractor is licensed. The temporary qualifying party is required to pass the regular examination as set forth in Subsection B of this section within ninety days of issuance of a temporary certificate of qualification.

E. The certificate of qualification is not transferable.

F. A qualifying party whose certificate is revoked by the commission shall not reapply for a certificate for one year.

History: 1953 Comp., § 67-35-18, enacted by Laws 1967, ch. 199, § 18; 1969, ch. 224, § 7; 1971, ch. 214, § 1; 1977, ch. 245, § 178; 1983, ch. 105, § 9; 1985, ch. 70, § 2; 1989, ch. 6, § 16; 1997, ch. 181, § 4.

The 1997 amendment, effective July 1, 1997, substituted the language beginning "offered by" for "which has been approved and certified under rules and regulations adopted by the division and approved by the commission" at the end of the first sentence and added the language

beginning "and shall be" at the end of the second sentence in Subsection C; and made stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 47; 58 Am. Jur. 2d Occupations, Trades and Professions § 1 et seq.
53 C.J.S. Licenses § 40.

60-13-17. Repealed.

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-17 NMSA 1978, as amended by Laws 1977, ch. 245, § 179,

relating to review before refusal to license, effective July 1, 1989.

60-13-18. Licenses; renewal.

A. Licenses issued by the division are not transferable.

B. Contractor's licenses shall expire two years after the issuance date or as determined by the division, but in no instance less than one year, and shall be renewable upon application to the division and payment of the prescribed renewal fee; provided that nothing in this subsection shall prohibit the division from establishing a staggered system of license expiration and a procedure for proration of fees for licenses issued for less than the two-year period or other period provided by the division pursuant to this subsection.

C. Licenses shall expire upon the date established by regulation of the commission, such regulation to provide for a staggered system of license expiration and for proration of fees for licenses issued for less than a full year. Thereafter, such licenses shall be issued for a period of two years or as otherwise provided by the division pursuant to Subsection B of this section. Except as provided in Section 4 [60-13-14.1 NMSA 1978] of this 2021 act, licenses and certificates shall be subject to renewal upon application to the division and payment of the prescribed renewal fee.

D. Licensees and journeyman certificate holders may be required to complete and submit proof of continuing education as a prerequisite for renewal of a license. When required by rule adopted by the division, an applicant for a license renewal must submit with the application for license renewal proof of eight hours of instruction in code change and eight hours of instruction in other industry-related and division-approved subjects. The sixteen hours of continuing education must have been completed within the three years prior to the date of the license renewal application.

E. The director shall, at least thirty days prior to the expiration date of a license, notify the licensee of the approaching expiration. Notice shall be given by mail addressed to the licensee's last address on file with the division. The notice shall include a renewal application form, instructions and any other information prescribed by the division.

F. Failure of a licensee to make application for the renewal of the licensee's license, to furnish such other information required by the commission and, if required, to pay the prescribed renewal fee by the last working day prior to the expiration of the license shall cause the license to be suspended by operation of law.

G. Unless the license is renewed within a three-month period, it shall be canceled. The suspended license may be renewed only after payment of a fee equal to one dollar (\$1.00) for each day, up to thirty days, that has elapsed since the expiration date of the license and thereafter for a fee equal to twice the amount of the renewal fee.

History: 1953 Comp., § 67-35-20, enacted by Laws 1967, ch. 199, § 20; 1969, ch. 224, § 8; 1977, ch. 245, § 180; 1983, ch. 105, § 10; 1987, ch. 283, § 3; 1989, ch. 6, § 17; 2007, ch. 56, § 1; 2021, ch. 92, § 6.

The 2021 amendment, effective June 18, 2021, provided for the waiver of license and certificate fees for military service members and veterans; in Subsection C, after "Subsection B of this section", added "Except as provided

in Section 4 of this 2021 act", and after the next occurrence of "licenses", added "and certificates"; and in Subsection F, after "required by the commission and", added "if required".

The 2007 amendment, effective June 15, 2007, added a new subsection authorizing the construction industries division to require continuing education for renewal of a contractor's license.

60-13-19. Division; evidence of possession; penalty.

A. The licensee shall exhibit satisfactory evidence of the possession of a license on demand and shall clearly indicate his contractor's license number on all written bids and when applying for a building permit.

B. A contractor who fails to indicate his contractor's license number clearly on all written bids and when applying for a building permit shall be assessed a penalty fee of one hundred fifty dollars (\$150) by the division. The fee shall be payable to the code jurisdiction or political subdivision that issued the permit or in which the work for which the bid is submitted is or would be permitted.

C. Before work is commenced, a contract is signed or funds are paid for any residential contracting, the contractor shall disclose in writing to the owner, on a form approved by the division, that the license issued and the bond or other proof of responsibility required pursuant to the Construction Industries Licensing Act does not protect the consumer if the contractor defaults. Any contractor who fails to make the disclosure required by this subsection shall be assessed a fee by the division in an amount not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500) as determined by the division. The fee shall be payable to the division.

History: 1953 Comp., § 67-35-21, enacted by Laws 1978, ch. 78, § 1; 1983, ch. 105, § 11; 1989, ch. 6, § 18; 2003, ch. 286, § 1.

Repeals and reenactments. — Laws 1978, ch. 78, § 1, repealed former 67-35-21, 1953 Comp. (former 60-13-19 NMSA 1978), as amended by Laws 1977, ch. 245, § 181, relating to evidence of possession, and posting of license, and enacted a new 67-35-21, 1953 Comp. For provisions of former section, see 1978 Original Pamphlet.

The 2003 amendment, effective June 20, 2003, deleted "Before work is commenced, a contract is signed or

funds are paid for any residential contracting, the contractor shall disclose in writing to the owner that the license issued under the Construction Industries Licensing Act [this article] does not protect the consumer if the contractor defaults" at the end of Subsection A; in Subsection B, deleted "or who fails to make the disclosure statement required under this section" following "for a building permit" near the middle of the first sentence and added "by the division" at the end of the first sentence; and added present Subsection C.

60-13-20. Fees established by the division; payment of examination and licensing service fees.

A. The division shall by regulation establish and charge, except as provided in Section 4 [60-13-14.1 NMSA 1978] of this 2021 act, reasonable candidate and applicant fees for each license and certificate classification for initial applications, initial and additional examinations, license issuance and renewals, certificate of qualification issuance and renewal and licensing verification services.

B. The division by regulation may provide that fees charged pursuant to Subsection A of this section shall be paid to the agency providing or administering the service if the service is provided pursuant to authority of the division.

History: 1953 Comp., § 67-35-22, enacted by Laws 1967, ch. 199, § 22; 1977, ch. 245, § 182; 1983, ch. 105, § 12; 1987, ch. 283, § 4; 1989, ch. 6, § 19; 1997, ch. 181, § 5; 2021, ch. 92, § 7.

Cross references. — For definition of "division," see 60-13-2 NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided for the waiver of license and certificate classification fees for military service members and veterans; and in Subsection A, after "establish and charge", added "except as provided in Section 4 of this 2021 act".

The 1997 amendment, effective July 1, 1997, inserted "and licensing service" in the section heading; in Subsection A, inserted "and charge", "candidate and applicant" and "and certificate" and added "and renewal and licensing verification services" at the end; and, in Subsection B, substituted the language beginning "fees charged" for

"examination fees, other than examination fees collected by the division for examination of journeymen pursuant to Section 60-13-38 NMSA 1978, shall be paid to the agency administering the examination".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 39 to 41; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 10, 11.

Amount of license fee imposed on electricians, 96 A.L.R. 1506.

Amount in controversy for purposes of jurisdiction in case involving tax or license fee, 109 A.L.R. 300.

Reasonableness of amount of license fee imposed upon plumbers, 114 A.L.R. 573.

53 C.J.S. Licenses §§ 64 to 73.

60-13-21. Division; disposition of fees.

Fees received by the division except journeymen examination fees shall be paid to the state treasurer for deposit and transfer as provided in Section 9-16-14 NMSA 1978.

History: 1953 Comp., § 67-35-24, enacted by Laws 1967, ch. 199, § 24; 1969, ch. 189, § 1; 1973, ch. 259,

§ 10; 1977, ch. 245, § 183; 1986, ch. 107, § 2; 1987, ch. 283, § 5; 1987, ch. 298, § 7; 1989, ch. 6, § 20.

60-13-21.1. Repealed.

Repeals. — Laws 1987, ch. 283, § 7 repeals 60-13-21.1 NMSA 1978, as enacted by Laws 1986, ch. 107, § 3,

relating to collection and distribution of moneys in the "examination fund," effective June 19, 1987.

60-13-22. Repealed.

Repeals. — Laws 1983, ch. 105, § 24, repeals 60-13-22 NMSA 1978, as amended by Laws 1977, ch. 245, § 184,

relating to expenses of the division and the trade bureaus, effective July 1, 1983.

60-13-23. Revocation or suspension of license by the commission; causes.

Any license issued by the division shall be revoked or suspended by the commission for any of the following causes:

A. if the licensee or qualifying party of the licensee willfully or by reason of incompetence violates any provision of the Construction Industries Licensing Act [60-13-1 NMSA 1978] or any rule or regulation adopted pursuant to that act by the division;

B. knowingly contracting or performing a service beyond the scope of the license;

C. misrepresentation of a material fact by the applicant in obtaining a license;

D. failure to maintain proof of responsibility as required by the Construction Industries Licensing Act;

E. unjustified abandonment of any contract as determined by a court of competent jurisdiction;

F. conversion of funds or property received for prosecution or completion of a specific contract or for a specified purpose in the prosecution or completion of any contract, obligation or purpose, as determined by a court of competent jurisdiction;

G. departure from or disregard of plans or specifications that result in code violations;

H. willful or fraudulent commission of any act by the licensee as a contractor in consequence of which another is substantially injured, as determined by a court of competent jurisdiction;

I. failure to maintain workers' compensation insurance as required by the Workers' Compensation Act [52-1-1 NMSA 1978];

J. aiding, abetting, combining or conspiring with a person to evade or violate the provisions of the Construction Industries Licensing Act by allowing a contractor's license to be used by an unlicensed person, or acting as agent, partner, associate or otherwise in connection with an unlicensed person, with the intent to evade the provisions of the Construction Industries Licensing Act; or

K. acting in the capacity of a licensee under any other name than is set forth upon the license.

History: 1953 Comp., § 67-35-26, enacted by Laws 1967, ch. 199, § 26; 1977, ch. 245, § 185; 1989, ch. 6, § 21; 1993, ch. 193, § 13.

The 1993 amendment, effective June 18, 1993, made a stylistic change in Subsection H, inserted present Subsection I, and redesignated the remaining subsections accordingly.

ANNOTATIONS

"Conversion." — Section 60-13-23F NMSA 1978 creates a technical trust within the meaning of 11 U.S.C. § 523(a)(4), and that for purposes of the New Mexico statute, "conversion," like "diversion," means the failure by the contractor who is entrusted with funds to be used for a specific project to use the funds for their intended purpose. *Crossingham Trust v. Baines (In re Baines)*, 337 B.R. 392 (Bankr. D.N.M. 2006).

Notice of contemplated action sufficient. — The notice of contemplated action in this case was sufficient to provide the licensee with notice, even though it did not state that the qualifying party certificate was in jeopardy; the licensee knew the general nature of the proceedings against him and that is all that notice pleading requires. Further, the licensee waived the lack of notice issue by appearing at the administrative hearing and defending on the merits. *Oden v. State, Regulation & Licensing Dep't*, 1996-NMSC-022, 121 N.M. 670, 916 P.2d 1337.

Contractor's fiduciary capacity imposed by law binding on him. — Fiduciary capacity of contractor who was advanced money pursuant to construction contracts was imposed by law, rather than implied by law, and existed independent of any express understanding he had with the owner governing the same obligation. Since obtaining state license by contractor is prerequisite to entering construction industry in New Mexico, obligation and duties imposed under this section were binding upon contractor prior to any dealings he had with the owner, and a bankruptcy court's finding that the contractor was acting in a fiduciary capacity within the meaning of federal bankruptcy law, is not clearly erroneous. *In re Romero*, 535 F.2d 618 (10th Cir. 1976).

This section imposes fiduciary duty upon contractors who have been advanced money pursuant to construction contracts. *In re Romero*, 535 F.2d 618 (10th Cir. 1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 59 to 62; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 8, 9.

Stay, pending review, of judgment or order revoking or suspending a professional, trade or occupational license, 166 A.L.R. 575.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses §§ 50 to 53.

60-13-23.1. Administrative penalty.

A. Notwithstanding any provisions of the Uniform Licensing Act [61-1-1 NMSA 1978] or the Construction Industries Licensing Act [60-13-1 NMSA 1978] to the contrary, the commission may, in addition to or instead of revocation or suspension of a license issued by the division for any cause specified in the Construction Industries Licensing Act, assess the licensee an administrative penalty in the following amounts:

(1) where the dollar value of the contract or work performed is five thousand dollars (\$5,000) or less, the penalty shall be not less than three hundred dollars (\$300) or more than five hundred dollars (\$500); or

(2) where the dollar value of the contract or work performed is more than five thousand dollars (\$5,000), the penalty shall be in an amount equal to not more than ten percent of the dollar amount of the contract or work performed but not less than five hundred dollars (\$500).

B. If a person subject to the penalties under Subsection A of this section previously has had his contractor's license suspended or revoked or has been assessed an administrative penalty

pursuant to Subsection A of this section, that person shall be assessed twice the amount specified in Paragraph (1) or (2) of Subsection A of this section, as applicable.

C. Failure to pay an administrative penalty upon the date set by the commission shall subject the offender to an additional penalty of one hundred dollars (\$100) for each day the offender fails to comply with the order. The attorney general shall institute an action in the district court to recover the appropriate penalties.

History: 1978 Comp., § 60-13-23.1, enacted by Laws 1987, ch. 283, § 6; 1989, ch. 6, § 22.

60-13-24. Certificates of qualification; statewide inspector's certificates; causes for revocation or suspension.

Any certificate of qualification or statewide inspector's certificate shall be revoked or suspended by the commission for the following causes:

- A. misrepresentation of a material fact by the individual in obtaining the certificate;
- B. violation, willfully or by reason of incompetence, of any provision of the Construction Industries Licensing Act or any code, minimum standard, rule or regulation adopted pursuant to that act; or
- C. aiding, abetting, combining or conspiring with a person to evade or violate the provisions of the Construction Industries Licensing Act or any code, minimum standard, rule or regulation adopted pursuant to that act.

History: 1953 Comp., § 67-35-27, enacted by Laws 1967, ch. 199, § 27; 1977, ch. 245, § 186; 1989, ch. 6, § 23; 2013, ch. 142, § 3; 2013, ch. 153, § 3.

The 2013 amendment, effective June 14, 2013, provided qualifications for statewide inspector's certificates; in the title, after "qualification", added "statewide inspector's certificates"; and in the introductory sentence, after "qualification", added "or statewide inspector's certificate". Laws 2013, ch. 142, § 3, and Laws 2013, ch. 153, § 3, both effective June 14, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 153, § 3. See 12-1-8 NMSA 1978.

ANNOTATIONS

Notice of contemplated action sufficient. — The notice of contemplated action in this case was sufficient to provide the licensee with notice, even though it did not state that the qualifying party certificate was in jeopardy; the licensee knew the general nature of the proceedings against him and that is all that notice pleading requires. Further, the licensee waived the lack of notice issue by appearing at the administrative hearing and defending on the merits. *Oden v. State, Regulation & Licensing Dep't*, 1996-NMSC-022, 121 N.M. 670, 916 P.2d 1337.

60-13-25. Qualifying party; termination of relationship.

In the event the employment or business relationship between the qualifying party and the licensee is terminated, the licensee and the qualifying party shall notify the division within thirty days of that termination in relationship, and the license shall be suspended for one hundred twenty days from the date of the termination of employment or business relationship and then canceled unless another individual who is a properly certified qualifying party is approved as the qualifying party for the licensee.

History: 1953 Comp., § 67-35-28, enacted by Laws 1967, ch. 199, § 28; 1977, ch. 245, § 187; 1983, ch. 105, § 13; 1989, ch. 6, § 24.

60-13-26. Division; trade bureaus; liability of commission members.

Neither the division, the bureaus, their duly authorized employees nor members of the commission shall be held personally responsible or liable for any act pertaining to their official duties.

History: 1953 Comp., § 67-35-29, enacted by Laws 1967, ch. 199, § 29; 1977, ch. 245, § 188; 1989, ch. 6, § 25.

60-13-27. Complaints against licensees and certificate holders; investigations by division; informal resolution; notice of revocation action.

A. The division on its own motion or upon the verified complaint in writing of any person shall investigate the actions of any licensee or certificate holder. The director may assign one or more inspectors certified pursuant to Section 60-13-41 NMSA 1978, investigators or other personnel to investigate that licensee or certificate holder or any activity within the jurisdiction of the Construction Industries Licensing Act [60-13-1 NMSA 1978]. The director may authorize an inspector or investigator to enter any code jurisdiction to make investigations. The investigation shall be for the purpose of determining if there has been a code violation or other breach of Section 60-13-23, 60-13-24 or 60-13-36 NMSA 1978 on the part of a licensee or certificate holder constituting probable grounds for revocation or suspension of his license or certificate.

B. The person assigned by the director shall make an immediate investigation, securing all pertinent facts and statements, including a statement from the contractor, if he is available, and names and addresses of witnesses. Within one hundred eighty days of receipt of the complaint by the division, he shall make a full and complete written report to the director.

C. Complaints may be resolved informally at the request of the complainant, the contractor or the commission. For informal resolution of a complaint, all parties must agree to the informal hearing and agree that the decision of the informal hearing officer is final. The procedures for informal hearings and resolution of complaints shall be established by the commission.

D. All revocation and suspension proceedings conducted by the commission and judicial review of the commission's decision shall be governed by the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978]. Prior to any revocation action by the commission, notice of the pending action shall be given to the bonding company which has in effect for the licensee any bond issued pursuant to the proof of responsibility provisions of the Construction Industries Licensing Act.

History: 1953 Comp., § 67-35-30, enacted by Laws 1967, ch. 199, § 30; 1977, ch. 245, § 189; 1977, ch. 377, § 4; 1978, ch. 73, § 2; 1989, ch. 6, § 26.

ANNOTATIONS

Obtaining statement from licensee. — This section does not require the investigator to obtain a statement

from the licensee before proceeding with the revocation hearing; the statute is properly read as requiring only that the inspector make a reasonable effort to gather all pertinent information during the investigation. *Oden v. State, Regulation & Licensing Dep't*, 1996-NMSC-022, 121 N.M. 670, 916 P.2d 1337.

60-13-28. Suspension period.

A. The commission shall make all suspensions for a definite period not exceeding ninety consecutive days. Suspension of a license for any cause specified in the Construction Industries Licensing Act [60-13-1 NMSA 1978] shall not preclude revocation of that license for cause by the commission.

B. A contractor whose license has been suspended or revoked shall complete work in progress as directed by the commission.

C. At the end of the suspension period, the commission shall review the license to determine if the license should be reinstated or revoked.

History: 1953 Comp., § 67-35-31, enacted by Laws 1967, ch. 199, § 31; 1977, ch. 245, § 190; 1989, ch. 6, § 27.

60-13-29. Application following revoked license or certificate.

A. After revocation of any license or certificate issued pursuant to the Construction Industries Licensing Act, no person shall be eligible to apply for a new license or certificate until a period of one year after the date of the original order of revocation by the commission has expired.

B. Following the revocation of a contractor's license or a qualifying party's certificate pursuant to the Construction Industries Licensing Act, no license or certificate may be issued to that contractor or qualifying party by the division if the director finds that the contractor or qualifying party has, during the period of revocation, engaged in activity that constitutes a violation of any provision of the Construction Industries Licensing Act.

History: 1953 Comp., § 67-35-32, enacted by Laws 1967, ch. 199, § 32; 1977, ch. 245, § 191; 1989, ch. 6, § 28; 2005, ch. 264, § 1.

The 2005 amendment, effective July 1, 2005, provided in Subsection A that after revocation of a license or certificate, no person shall be eligible to apply for a new license or certificate for a one year period; deleted in Subsection A the former provision that after the revocation period, a license or certificate shall not be issued, renewed or reissued except as is provided for the issuance of an initial

license or certificate; and added Subsection B to provide that after the period of revocation, no license or certificate shall be issued if the director of the division finds that the contractor or qualifying party has during the revocation period violated the Construction Industries Licensing Act.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

60-13-30. Suit by contractor for compensation; pleading and proof of license.

A. No contractor shall act as agent or bring or maintain any action in any court of the state for the collection of compensation for the performance of any act for which a license is required by the Construction Industries Licensing Act [60-13-1 NMSA 1978] without alleging and proving that such contractor was a duly licensed contractor at the time the alleged cause of action arose.

B. Any contractor operating without a license as required by the Construction Industries Licensing Act shall have no right to file or claim any mechanic's lien as now provided by law.

History: 1953 Comp., § 67-35-33, enacted by Laws 1967, ch. 199, § 33; 1977, ch. 245, § 192.

Cross references. — For mechanics' and materialmen's liens, see Chapter 48, Article 2 NMSA 1978.

ANNOTATIONS

Licensed contractor is precluded from collecting compensation for work performed by an unlicensed contractor. — Where a licensed general contractor entered into a contract with defendants to stucco defendants' home; the general contractor employed an unlicensed contractor to perform the work; and the general contractor fully compensated the unlicensed contractor for the work, the general contractor was precluded from collecting compensation for the work performed by the unlicensed contractor. *Reule Sun Corp. v. Valles*, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611, rev'g 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197, overruling *Latta v. Harvey*, 1960-NMSC-046, 67 N.M. 72, 352 P.2d 649 and *Campbell v. Smith*, 1961-NMSC-059, 68 N.M. 373, 362 P.2d 523.

Unlicensed subcontractor. — An unlicensed subcontractor is barred by this section from recovering compensation for construction work performed for a general contractor. *Romero v. Parker*, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Recovery of payments from an unlicensed subcontractor. — A general contractor who did not act responsibly in hiring an unlicensed subcontractor is barred by this section from recovering compensation paid to the subcontractor. *Romero v. Parker*, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Where a general contractor hired an unlicensed subcontractor; the subcontractor did not withhold information concerning the subcontractor's licensure from the general contractor; the general contractor could have obtained information concerning the subcontractor's licensure upon reasonable inquiry; and the general contractor paid the subcontractor for work performed by the subcontractor, the general contractor did not act responsibly in hiring

the subcontractor and is barred from recovering the payment from the subcontractor by this section. *Romero v. Parker*, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Equitable principles do not apply. — Equitable principles do not apply in actions covered by this section to permit recovery. *Romero v. Parker*, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Subcontractor is not an employee of the general contractor. — Where a masonry contractor used various methods to bill a general contractor, including per hour, per load, per square foot and per item methods; the masonry contractor used its own tools and equipment, had its own employees, invoiced the general contractor under a business name, was responsible for its own registration and licensing, and was paid when each assignment was completed; the general contractor did not direct or control the details of the masonry contractor's work, did not withhold employee related state and federal taxes from the masonry contractor's invoices; and did not include the masonry contractor and its employees under the general contractor's workers' compensation coverage, the masonry contractor was not an employee of the general contractor. *Romero v. Parker*, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Construction acts cannot be separated to evade the licensing requirement. — Where an unlicensed subcontractor performed work for a general contractor on several individual job assignments; some of the assignments did not require a license, the subcontractor cannot evade the licensing requirement of this section by separating construction acts into individual job assignments. *Romero v. Parker*, 2009-NMCA-047, 146 N.M. 116, 207 P.3d 350.

Work by employee. — Where a licensed general contractor employed an unlicensed individual and his crew to perform work, issued a detailed work order, observed and oversaw the performance of the work by the individual and his crew, and furnished the individual and his crew with insurance and most of the major equipment and material to perform the work; the individual worked exclusively for the contractor on a full time basis; the individual

and his crew were required to wear the contractor's uniforms and display the contractor's signs, and the contractor was responsible for defects in the individuals' work, the individual was an employee of the contractor, not a subcontractor, and the contractor could sue for payment on a construction contract for work performed by the individual. *Reule Sun Corporation v. Valles*, 2008-NMCA-115, 144 N.M. 736, 191 P.3d 1197, *rev'd*, 2010-NMSC-004, 147 N.M. 512, 226 P.3d 611.

False conflict doctrine applied. — Where the plaintiff performed construction work on a project in Arizona for the defendant; both parties were New Mexico citizens; Arizona law required the plaintiff to have an Arizona contractor's license to perform the work on the project; the plaintiff did not have the required Arizona contractor's license; the defendant had the required Arizona contractor's license; and under both New Mexico and Arizona law unlicensed contractors are barred from recovering for their work under any cause of action, the plaintiff was an independent contractor of the defendant notwithstanding the fact that the parties' contract purported to create an employer-employee relationship between the parties, and the plaintiff did not substantially comply with contractor licensing requirements, the trial court properly applied the false conflict doctrine and dismissed the plaintiff's action for breach of contract and unjust enrichment. *Fowler Brothers, Inc. v. Bounds*, 2008-NMCA-091, 144 N.M. 510, 188 P.3d 1261.

Contrary to public policy. — Contracts entered into by unlicensed contractors are contrary to public policy and unenforceable. *Gamboa v. Urena*, 2004-NMCA-053, 135 N.M. 515, 90 P.3d 534, *cert. denied*, 2004-NMCERT-005, 135 N.M. 565, 92 P.3d 10.

No due process or equal protection contravention. — Section does not contravene due process clause or deny equal protection of law as guaranteed by the New Mexico constitution. *Fischer v. Rakagis*, 1955-NMSC-057, 59 N.M. 463, 286 P.2d 312.

Act does not violate N.M. Const., art. IV, § 18 as attempt to amend the Mechanic's Lien Law by reference. *Fischer v. Rakagis*, 1955-NMSC-057, 59 N.M. 463, 286 P.2d 312.

Courts reluctant to construe act broadly. — Purpose of the act is to protect public from incompetent and irresponsible builders and in view of the severity of sanctions and forfeitures which could be involved, the court is reluctant to construe the statute more broadly than necessary for achievement of its purpose. *Peck v. Ives*, 1972-NMSC-053, 84 N.M. 62, 499 P.2d 684; *Olivas v. Sibco, Inc.*, 1975-NMSC-027, 87 N.M. 488, 535 P.2d 1339.

Section overrides policy disfavoring unjust enrichment. — The legislature chose to harshly penalize unlicensed contractors by denying them access to the courts to collect compensation for work performed, and its policy must override the judicial principle that disfavors unjust enrichment. *Triple B Corp. v. Brown Root, Inc.*, 1987-NMSC-058, 106 N.M. 99, 739 P.2d 968.

Legislative intent to bar suit by unlicensed contractor. — Intent of legislature under this section was to prohibit bringing of suit by unlicensed contractors acting illegally, and not to bar remedy of lawful contractors because of a technical error in their pleadings. *Daughtrey v. Carpenter*, 1970-NMSC-151, 82 N.M. 173, 477 P.2d 807.

The provisions of this section should not be transformed into an "unwarranted shield for the avoidance of a just obligation." *Olivas v. Sibco, Inc.*, 1975-NMSC-027, 87 N.M. 488, 535 P.2d 1339.

Not applicable to joint venturer. — This section did not apply to a party engaged in a joint venture agreement who undertook to perform repair and construction work on property of which he was a joint owner. *Lightsey v. Marshall*, 1999-NMCA-147, 128 N.M. 353, 992 P.2d 904, *cert. denied*, 128 N.M. 148, 990 P.2d 822.

No foreclosure of lien or judgment on contract where no license. — Failure of contractor to have license at the time contract was entered into prevented foreclosure of mechanic's lien or any judgment based on the contract for work done, even though a license was secured before work was completed or his cause of action arose. *Crawford v. Holcomb*, 1953-NMSC-102, 57 N.M. 691, 262 P.2d 782, *overruled on other grounds by State ex rel. Gary v. Fireman's Fund Indem. Co.*, 1960-NMSC-100, 67 N.M. 360, 355 P.2d 291.

No recovery based on contract entered into by unlicensed contractor. — To recover damages for breach of contract, where the plaintiff must rely on an alleged contract entered into by him in violation of statutes which prohibit contracting as unlicensed contractor and provide a criminal penalty for the violation, his action may not be maintained. *Fleming v. Phelps-Dodge Corp.*, 1972-NMCA-060, 83 N.M. 715, 496 P.2d 1111.

Unlicensed contractor should not be able to recover for the fabrication of his clients' cabinets and countertops in light of the fact that, under his view of the agreement, he did not charge anything for installation, because under his legal theory, contractor is in effect asking the court to excuse the construction work he performed without a license and exempt him from the requirements of the Construction Industries Licensing Act. *Gamboa v. Urena*, 2004-NMCA-053, 135 N.M. 515, 90 P.3d 534, *cert. denied*, 2004-NMCERT-005, 135 N.M. 565, 92 P.3d 10.

When recovery prohibited. — The statute only prohibits an unlicensed contractor from bringing or maintaining an action "for the collection of compensation" for construction work, and therefore, recovery by cross-plaintiff was prohibited only if its action on note and mortgage was one for collection of compensation for a construction contract. *Institute for Essential Hous., Inc. v. Keith*, 1966-NMSC-067, 76 N.M. 492, 416 P.2d 157.

To establish that plaintiff is precluded from recovery by this section requires proof that cabinets were "fabricated" into the structure within the meaning of 60-13-3C(1) NMSA 1978 (now see 60-13-3D(1) NMSA 1978). *American Builders Supply Corp. v. Enchanted Builders, Inc.*, 1972-NMSC-012, 83 N.M. 503, 494 P.2d 165.

Recipient of work can recover payments made on a contract to an unlicensed contractor. *Mascarenas v. Jaramillo*, 1991-NMSC-014, 111 N.M. 410, 806 P.2d 59.

No license requirement for cleanup activity. — When construction work had been completed without objection and the only dispute centered around the amount of offset defendant should be allowed as costs for cleaning up the work site, the cleanup activity involved did not require a contractor's license according to the definitions of 60-13-3 NMSA 1978 and was therefore not governed by this section. *Olivas v. Sibco, Inc.*, 1975-NMSC-027, 87 N.M. 488, 535 P.2d 1339.

Substantial compliance with licensing requirement. — The doctrine of substantial compliance developed in California, which has a licensing act similar to that of New Mexico, is applicable in New Mexico. The three elements of substantial compliance are: (1) appellant held a valid license at the time of contracting; (2) appellant readily secured a renewal of his license; and (3) the responsibility and competence of plaintiff's managing officer were officially confirmed throughout period of performance of contract. *Peck v. Ives*, 1972-NMSC-053, 84 N.M. 62, 499 P.2d 684.

Since appellant has violated provisions of the act as to aggregate dollar amount of contract for which he is financially responsible at any one time, and thus taken himself out of the duly licensed category, he has "substantially complied" with the licensing requirements to such a degree that he is not barred from bringing suit. *Peck v. Ives*, 1972-NMSC-053, 84 N.M. 62, 499 P.2d 684.

A contractor was in substantial compliance with the act, despite an inadvertent lapse in his license prior to entering into and performing a construction contract; the cancellation of his license occurred for reasons beyond his control and not for reasons of incompetence or discipline, the contractor readily secured a renewal of his license, and the contractor exhibited fiscal responsibility and competence by complying immediately upon becoming aware of the default. *Koehler v. Donnelly*, 1992-NMSC-058, 114 N.M. 363, 838 P.2d 980.

No substantial compliance. — Subcontractor did not "substantially comply" with licensing requirements to the degree necessary to avoid being barred under this section from bringing suit where he was not licensed at the time he entered into the contract, his efforts to secure a new license when his performance under the subcontract was near completion did not constitute the securing of a "renewal" of his license, and his efforts to secure a license did not confirm his responsibility and competence throughout the period of performance. *Roth v. Thompson*, 1992-NMSC-011, 113 N.M. 331, 825 P.2d 1241.

Party mining copper ore considered contractor. — A party who contracts to "perform certain mining work on copper siliceous ores" and to "pay for all labor, work, mining expenses, material, explosives and moving commercial copper ores to specified stockpile location" is contractor within the terms of this section. *Salter v. Kindom Uranium Corp.*, 1960-NMSC-040, 67 N.M. 34, 351 P.2d 375.

Employee not independent contractor where performance controlled. — Since plaintiff was hired by defendant for drilling purposes, and since defendant retained at all times the right of control of performance of work as well as the right to direct manner in which the work would be done, the plaintiff was an employee, not an independent contractor, and was not barred from recovery under this act for failure to obtain contractor's license. *Latta v. Harvey*, 1960-NMSC-046, 67 N.M. 72, 352 P.2d 649.

Effect of knowledge contractor not licensed. — Under former law, fact that defendants in action to establish and foreclose mechanic's lien knew at the time they entered into contract with plaintiff that latter was not duly licensed did not estop them from asserting plaintiff's noncompliance with the statute. *Kaiser v. Thomson*, 1951-NMSC-037, 55 N.M. 270, 232 P.2d 142.

Allegation required that contractor duly licensed. — Former law required allegation that contractor was duly licensed at time cause of action arose. *Kaiser v. Thomson*, 1951-NMSC-037, 55 N.M. 270, 232 P.2d 142.

Raising issue of noncompliance with licensing requirements. — If a complaint on its face shows that compliance with requirement that a contractor be licensed is essential to cause of action, the issue of noncompliance may be raised and dealt with as a matter of law. *American Builders Supply Corp. v. Enchanted Bldrs., Inc.*, 1972-NMSC-012, 83 N.M. 503, 494 P.2d 165.

Failure to allege license is affirmative defense. — The defense of failure to allege license under the statute is affirmative in nature, and should be pleaded. *American Builders Supply Corp. v. Enchanted Bldrs., Inc.*, 1972-NMSC-012, 83 N.M. 503, 494 P.2d 165.

Failure to allege license is equivalent to failure to state claim. — Since failure to allege license under the act is fatal to complaint, it may be asserted at any time that complaint fails to state claim on which relief can be granted. *American Builders Supply Corp. v. Enchanted Bldrs., Inc.*, 1972-NMSC-012, 83 N.M. 503, 494 P.2d 165.

Evidence of license treated as tried by parties' consent. — Where appellants made no objection to evidence of contractor's license and raised neither jurisdiction nor limitation question at trial, and requested no findings on either question, the requirement of allegation of a contractor's license was a matter of public policy and did not, otherwise, bear any relation to the cause of action; and appellant cannot object to appellate court treating issue tried with consent of the parties as though it had been raised by the pleadings. *Daughtrey v. Carpenter*, 1970-NMSC-151, 82 N.M. 173, 477 P.2d 807.

Default judgment on crossclaim. — Subcontractor's failure to state a claim upon which relief could be granted by alleging in his crossclaim that he was duly licensed as a contractor did not deprive the district court of jurisdiction to enter a default judgment on the crossclaim. *Sundance Mech. & Util. Corp. v. Atlas*, 1990-NMSC-031, 109 N.M. 683, 789 P.2d 1250.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834, 42 A.L.R. 1226, 118 A.L.R. 646.

Failure to procure license as affecting validity of plumber's contract, 118 A.L.R. 646.

Unjust enrichment of landowner based on adjoining landowner's construction, improvement, or repair of commonly used highway, street, or bridge, 22 A.L.R.5th 800.

53 C.J.S. Licenses §§ 74 to 77.

60-13-31. Trade bureaus created.

There are created under the division the "electrical bureau," the "mechanical bureau," the "general construction bureau" and the "liquefied petroleum gas bureau."

History: 1953 Comp., § 67-35-34, enacted by Laws 1967, ch. 199, § 34; 1973, ch. 259, § 12; 1977, ch. 245, § 193; 1983, ch. 105, § 14.

60-13-32. Trade bureaus; definitions.

As used in the Construction Industries Licensing Act:

A. "electrical wiring" means all wiring, conductors, fixtures, devices, conduits, appliances or other equipment, including generating equipment such as solar electricity generating equipment of not over ten kilowatt capacity, used in connection with the general distribution or use of electrical energy;

B. "plumbing" means the installing, altering and repairing of all plumbing fixtures, fixture traps and soil, waste, supply and vent pipes, with their devices, appurtenances and connections, through which water, waste, sewage, oil and air are carried, when done within the property lines of

the building or structure to be served by the plumbing or to the point of connection with the utility system. This subsection shall not be construed as prohibiting the installation by a "fixed works" licensee of service lines from the utility system to a point five feet outside the building or structure to be served by the plumbing;

C. "fixtures" includes closet bowls, lavatories, bathtubs, showers, kitchen sinks, laundry trays, hot water tanks, softeners, urinals, bidets, service sinks, shower pans, drink fountains, water compressors, water coolers, septic tanks or similar systems of sewage disposal and such other similar fixtures used in plumbing as designated by the mechanical bureau;

D. "gas fitting" means the installing, altering and repairing of consumers' gas piping and the installation of appliances utilizing natural gas as fuel and their appurtenances in or upon premises of the consumers;

E. "softener" or "water conditioner" means any appliance, apparatus, fixture and equipment that is designed to soften, filter or change the mineral content of water, whether permanent or portable; and

F. "certificate of competence" means evidence of competence issued by the division to a journeyman electrician, journeyman plumber, journeyman gas fitter, journeyman pipe fitter or journeyman welder working on pipelines, collection lines or compressor stations.

History: 1953 Comp., § 67-35-35, enacted by Laws 1967, ch. 199, § 35; 1969, ch. 224, § 9; 1977, ch. 245, § 194; 1984, ch. 55, § 1; 1989, ch. 6, § 29; 2013, ch. 86, § 2.

The 2013 amendment, effective June 14, 2013, clarified the definition of "electrical wiring"; and in Subsection A, after "generating equipment", added "such as solar electricity generating equipment".

60-13-33. Trade bureaus; general duties and powers.

The trade bureaus shall:

A. cooperate in administering examinations for the licensing and certification of the occupations or trades assigned to their jurisdictions pursuant to the Construction Industries Licensing Act [60-13-1 NMSA 1978], and provide those examinations and any related materials in both English and Spanish;

B. perform inspections of all occupations, trades and activities within their jurisdictions;

C. be responsible for all administrative duties and other duties necessary and incidental thereto required in the Construction Industries Licensing Act, including those activities and duties assigned to them by the director; and

D. recommend rules and regulations and submit them to the division for approval by the commission and promulgation by the division.

History: 1953 Comp., § 67-35-36, enacted by Laws 1967, ch. 199, § 36; 1977, ch. 245, § 195; 1977, ch. 377, § 5; 1978, ch. 73, § 2; 1985, ch. 70, § 3; 1989, ch. 6, § 30.

Cross references. — For trade bureaus, see 60-13-31 NMSA 1978.

repair of natural gas piping and the installation of natural gas appliances in house trailers came under the jurisdiction of the state plumbing administrative board under former law. 1959-60 Op. Att'y Gen. No. 60-230.

ANNOTATIONS

Jurisdiction over natural gas piping installation under former law. — The installation, alteration and

60-13-34, 60-13-35. Repealed.

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-34 and 60-13-35 NMSA 1978, as amended by Laws 1977, ch. 245,

§§ 196 and 197, relating to revocations by, and general powers of, trade bureaus, effective July 1, 1989.

60-13-36. Certificates of competence; suspension and revocation.

A. The commission may suspend any certificate of competence issued within the scope of the bureau's trade for a definite period not exceeding ninety consecutive days.

B. Suspension of a certificate of competence shall be for any cause specified in the Construction Industries Licensing Act [60-13-1 NMSA 1978].

C. The commission may revoke any certificate of competence issued by it only for the following causes:

- (1) misrepresentation of a material fact by the individual obtaining the certificate;
- (2) violation willfully or by reason of incompetence of any provision of the Construction Industries Licensing Act or any code, minimum standard, rule or regulation adopted pursuant to that act pertaining to installation, alteration, maintenance, connection or repair; or
- (3) aiding, abetting, combining or conspiring with a person to evade or violate the provisions of the Construction Industries Licensing Act or any code, minimum standard, rule or regulation adopted pursuant thereto.

History: 1953 Comp., § 67-35-39, enacted by Laws 1967, ch. 199, § 39; 1969, ch. 13, § 2; 1977, ch. 245, § 198; 1983, ch. 105, § 15; 1989, ch. 6, § 31.

53 C.J.S. Licenses §§ 50 to 62.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62; 58 Am. Jur. 2d Occupations, Trades and Professions §§ 8, 9.

60-13-37. Repealed.

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-37 NMSA 1978, as amended by Laws 1977, ch. 245, § 199, relating to renewal of revoked certification, effective July 1,

1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-38. Certificates of competence; examination; journeymen.

A. A person shall not engage in the occupation or trade of journeyman unless he holds a certificate of competence issued by the division for the occupation or trade in which he desires to engage.

B. The categories for certificates of competence are: journeyman electrician, journeyman plumber, journeyman gas fitter, journeyman pipe fitter, journeyman sheet metal worker, journeyman boiler operator, residential wireman and journeyman welder working on pipelines, collection lines or compressor stations.

C. An applicant for a certificate of competence shall be required to take an examination approved and adopted by the division as to his knowledge of the orders and rules governing the occupation or trade for which a certificate is sought, and as to his technical knowledge and ability pertaining to his particular trade. The examination may be oral, written or demonstrative or any combination thereof, as required by rules of the commission.

D. The division shall issue a certificate of competence to any journeyman welder working on pipelines, collection lines or compressor stations who shows evidence of having satisfactorily completed an examination administered by an independent testing organization or public utility employing engineers registered with the state, such examination meeting the minimum pipeline safety standards set by the public regulation commission.

E. Applications for certificates of competence shall be in the form and shall contain such information and attachments as the division prescribes.

F. The division shall establish a reasonable fee for any examination or issuance of certificate of competence.

G. A person is not eligible to take an examination for a certificate of competence unless he has had two years' experience in the occupation or trade for which a certificate of competence is sought, or the equivalent thereof as determined by the commission, or has successfully completed a course in the trade approved by the vocational education division of the state department of public education.

H. Employment of an apprentice working under the direct supervision of a certified journeyman is not prohibited by the Construction Industries Licensing Act [60-13-1 NMSA 1978].

I. A person is eligible to take an examination for a journeyman electrician certificate of competence after at least:

- (1) four years of accredited training in the electrical trade;
- (2) four years of apprenticeship in the electrical trade;
- (3) four years of practical experience in the electrical trade, of which two years are in the commercial trade, industrial trade or the equivalent as determined by the commission; or
- (4) successfully completing an electrical trade program approved by the vocational education division of the state department of public education and two years of practical experience in the commercial electrical trade.

J. Continuing education requirements for a journeyman electrician shall include at least sixteen hours of continuing education in every three-year period between national electrical code updates, of which eight hours are code change instructions and eight hours are other industry-related instruction. All continuing education curricula and instructors shall be approved by the commission based on recommendations by the electrical bureau.

K. A certificate of competence shall not be renewed until a complete application for renewal has been received by the division. Proof of completion of the continuing education requirements shall be submitted to the division with the application for renewal of certificate of competence. An application for renewal that is not accompanied by proof of completion of the continuing education requirements is incomplete and shall not be processed. The continuing education requirements in this subsection shall only apply to a journeyman electrician with the designation "EE-98J" or "JE98". This does not apply to EE98.

L. A person is eligible to take an examination for a residential wireman's certificate of competence after at least:

- (1) two years of accredited training or apprenticeship in the electrical trade;
- (2) two years of practical experience in wiring residential dwellings; or
- (3) successfully completing a course in the trade approved by the vocational education division of the state department of public education and one year of practical experience in wiring residential dwellings.

M. The provisions of Subsections I and L of this section do not apply to a person who was enrolled as a full-time student before June 20, 2003 in an electrical trade program approved by the vocational education division of the state department of public education.

History: 1953 Comp., § 67-35-41, enacted by Laws 1967, ch. 199, § 41; 1971, ch. 212, § 1; 1977, ch. 245, § 200; 1983, ch. 105, § 16; 1984, ch. 55, § 2; 1985, ch. 70, § 4; 1989, ch. 6, § 32; 2003, ch. 366, § 1.

The 2003 amendment, effective June 20, 2003, substituted "A person shall not engage" for "No individual shall engage" at the beginning of Subsection A; substituted "categories for" for "division shall issue" at the beginning of Subsection B; rewrote Subsection C and added Subsection D and redesignated the following subsections accordingly; in present Subsection D, substituted "public regulation commission" for "state corporation commission" at the end of the subsection; and added Subsections I through M.

ANNOTATIONS

State employees must obtain certificate. — The Personnel Act does not exempt state employees in journeyman occupations from obtaining a certificate of competency. 1981 Op. Att'y Gen. No. 81-11.

All persons employed in journeyman trades or occupations, including those employed by a state agency, are required by law to obtain a certificate of competency in accordance with the provisions of the Construction Industries Licensing Act. 1981 Op. Att'y Gen. No. 81-11.

Effect under former law of master electrician's disassociating from business. — When the master electrician disassociated himself from the business, the business had 60 days in which to qualify a new supervisor. The license remained with its owner, the new business, assuming that the master electrician was not a partner. The master electrician then, ipso facto, had no electrical contractor's license. Therefore, he had to apply for and obtain a new one before engaging in the electrical contracting business again. 1961-62 Op. Att'y Gen. No. 62-77.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 45 to 47, 113, 114.
53 C.J.S. Licenses § 40.

60-13-39. Certificates and examination.

A. Certificates of competence issued by the division are not transferable and shall expire on the date established by the division, not more than three years from the month of issuance.

B. Application shall be made before the expiration date for renewal of a current certificate of competence and shall be accompanied by the fee prescribed for the initial issuance of the certificate.

C. Applications for a renewal of a certificate of competence shall be filed with the division prior to the last working day before the certificate expires. An expired certificate shall be renewable

within a six-month period without examination and only upon paying a fee in twice the amount of the renewal fee. If the certificate has not been renewed within the six-month period, it shall be canceled.

History: 1953 Comp., § 67-35-42, enacted by Laws 1967, ch. 199, § 42; 1969, ch. 224, § 11; 1977, ch. 245, § 201; 1989, ch. 6, § 33; 1997, ch. 181, § 6.

The 1997 amendment, effective July 1, 1997, substituted "three years" for "one year" in Subsection A.

60-13-40. Repealed.

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-40 NMSA 1978, as amended by Laws 1983, ch. 105, § 17, relating to disposition of fees, effective July 1, 1989.

60-13-40.1. Repealed.

Repeals. — Laws 1997, ch. 181 § 11 repeals 60-13-40.1 NMSA 1978, as last amended by Laws 1989, ch. 324, § 31,

creating the journeymen testing revolving fund, effective July 1, 1997.

60-13-41. Inspectors; designated inspection agencies.

A. State inspectors shall be employed by the director.

B. Qualifications for inspectors shall be prescribed by the commission, and applicants shall submit to an appropriate background check as prescribed by the commission. Inspectors shall meet the minimum continuing education requirements as prescribed by the nationally recognized code organization for each trade bureau jurisdiction and provide proof of such credits to the division upon application for or renewal of certification.

C. The division shall certify and issue a statewide inspector's certificate to any person who meets the requirements established by the nationally recognized code organization for certification. The certificate shall list all trade bureaus for which the inspector is certified to inspect and shall be valid for a term of three years.

D. An inspector shall be employed by a county, municipality or other political subdivision in order to inspect work under permits issued in the trade bureau for which the inspector is certified; provided that the county, municipality or other political subdivision has a certified building official in its employ and has adopted the current minimum code standards as established by the commission.

E. Except as provided in Subsection F of this section, the state or its agent shall conduct all inspections if a county, municipality or other political subdivision does not have a certified building official in its employ.

F. A county, municipality or other political subdivision may enter into a memorandum of understanding to share a certified building official and inspectors operating under that certified building official with another county, municipality or other political subdivision; provided that the certified building official is employed in the same county, in an adjacent county, within one hundred miles of the county, municipality or other political subdivision or as approved by the division.

G. A person currently acting in the capacity of a certified building official may continue to act in that capacity and shall have five years from the effective date of this 2013 act to become a certified building official as prescribed by the Construction Industries Licensing Act. When a certified building official leaves the employ of a county, municipality or other political subdivision, the plan review, permitting and inspections overseen by that certified building official shall transfer to the state unless the county, municipality or other political subdivision, within sixty days or a longer period as approved by the division, replaces that certified building official or enters into a memorandum of understanding pursuant to Subsection F of this section.

H. The division may appoint inspection agencies to inspect the construction, installation, alteration or repair of manufactured commercial units, modular homes and premanufactured homes, including those manufacturers whose business premises are without the state, to ensure that

the New Mexico standards of construction and installation are adhered to and that the quality of construction meets all New Mexico codes and standards. If the inspection agency has no place of business within the state, it shall file a written statement with the secretary of state setting forth its name and business address and designating the secretary of state as its agent for the service of process.

I. The division shall, with the approval of the commission, establish qualifications for inspectors certified to inspect in more than one bureau's jurisdiction.

J. The director shall assign an investigator to investigate the merits of every complaint brought against an inspector and report to the commission within ten days.

History: 1953 Comp., § 67-35-49, enacted by Laws 1967, ch. 199, § 49; 1972, ch. 11, § 2; 1973, ch. 229, § 4; 1973, ch. 259, § 14; 1975, ch. 331, § 19; 1977, ch. 245, § 203; 1983, ch. 105, § 18; 1989, ch. 6, § 35; 2001, ch. 156, § 1; 2011, ch. 129, § 1; 2013, ch. 142, § 4; 2013, ch. 153, § 4.

The 2013 amendment, effective June 14, 2013, provided qualifications of inspectors; provided for statewide inspector's certificates; provided for local inspection agencies; in Subsection B, in the first sentence, after "Qualifications", deleted "and job descriptions", after "Qualifications for inspectors", deleted "for the state, municipalities and all other political subdivisions", and after "shall be prescribed by the commission", added the remainder of the sentence and added the second sentence; added Subsections C through G; deleted former Subsection D, which provided for reciprocal agreements with other jurisdictions; and added Subsection J.

Laws 2013, ch. 142, § 4, and Laws 2013, ch. 153, § 4, both effective June 14, 2013, enacted identical amendments to

this section. The section was set out as amended by Laws 2013, ch. 153, § 4. See 12-1-8 NMSA 1978.

The 2011 amendment, effective June 17, 2011, made no change.

The 2001 amendment, effective June 15, 2001, deleted "The commission shall also promulgate rules and regulations establishing a recertification incentive plan which provides for salary increases for state inspectors based on education and training and additional qualifications," from the end of Subsection B.

ANNOTATIONS

Authority to create categories of certification of inspectors. — The construction industries division of the regulation and licensing department has the authority to create different categories of certification with different certification standards based on an inspector's status as a state or local inspector. 2011 Op. Att'y Gen. No. 11-06.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

60-13-42. Authority of inspectors; limitation.

A. A state certified inspector may, during reasonable hours, enter any building or go upon any premises in the discharge of the inspector's official duties for the purpose of making an inspection of work performed or for the purpose of testing any installation authorized within the jurisdiction of the inspector's trade certification. The inspector may cut or disconnect, or have cut or disconnected in cases of emergency, an installation or device when necessary for safety to life or property or where the installation may interfere with the work of a fire department.

B. The inspector may disconnect or order the discontinuance of service to any installation, device, appliance or equipment found to be dangerous to life or property because it is defective or is incorrectly installed, until the installation, device, appliance or equipment is made safe and is approved by the inspector.

C. The inspector may order the correction of any defects or any incorrect installation that prompted the disconnection and discontinuance of service.

D. In all cases where disconnection is made, a notice shall be attached by the inspector to the installation, device, appliance or equipment disconnected, which notice shall state that the same has been disconnected by or on order of the inspector and the reason for the disconnection. It is unlawful for a person to remove the notice or to use the installation, device, appliance or equipment without authorization of an inspector.

E. The division shall by regulation adopt official inspection stickers or medallions for the purpose of identifying those modular homes and premanufactured homes that have been inspected and found to comply with all requirements of the state codes and standards. State inspection and acceptance for use of modular homes and premanufactured homes shall exclusively apply to the use and occupancy of such dwellings in the state and in any of its political subdivisions, subject to the requirements of local planning and zoning ordinances and ordinances requiring permits and inspections for foundations, electrical and mechanical hookups or other safety or sanitary requirements.

History: 1953 Comp., § 67-35-50, enacted by Laws 1967, ch. 199, § 50; 1972, ch. 11, § 3; 1973, ch. 259, § 15; 1975, ch. 331, § 20; 1977, ch. 245, § 204; 1989, ch. 6, § 36; 2011, ch. 129, § 2.

The 2011 amendment, effective June 17, 2011, eliminated the restriction that limited inspections by municipal inspectors only in localities where they were authorized to make inspections.

ANNOTATIONS

Reasonable business hours requirement is necessary so that the owner/occupier is present and the

inspector can seek consent. *Mimics, Inc. v. Village of Angel Fire*, 394 F.3d 836 (10th Cir. 2005).

Inspection of wiring in trailers, mobile homes. — The former electrical board could inspect the installation and use of electrical wiring in a trailer or mobile home during the construction of such trailer or mobile home within this state. 1969 Op. Att'y Gen. No. 69-51.

Inspection of buildings on Indian lands. — State inspection of buildings constructed by New Mexico contractors on Indian lands leased to private individuals under a 99-year lease does not interfere with reservation self-government. 1970 Op. Att'y Gen. No. 70-76.

60-13-43. Repealed.

Repeals. — Laws 2013, ch. 142, § 5 and Laws 2013, ch. 153, § 5 repealed 60-13-43 NMSA 1978, as enacted by Laws 1967, ch. 199, § 51, relating to qualification of

municipal and county inspectors, effective June 14, 2013. For provisions of former section, see the 2012 NMSA 1978 on *NMOneSource.com*.

60-13-44. Trade bureaus; standards; conflicts.

A. The electrical bureau shall recommend to the commission minimum standards for the installation or use of electrical wiring. The recommendations shall substantially embody the applicable provisions of an electrical code for safety to life and property promulgated by a nationally recognized association and developed through an open, balanced consensus process.

B. The mechanical bureau shall recommend to the commission minimum standards for the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of a mechanical installation. The recommendations shall be in substantial conformity with codes and standards that are developed through an open, balanced consensus process. Manufacturers may choose the independent certification organization they wish to certify their products if the certification organization is accredited by the American national standards institute or other accreditation organization selected by the commission.

C. The general construction bureau shall recommend to the commission minimum standards for the construction, alteration or repair of buildings, except for those activities within the jurisdiction of the electrical bureau or the mechanical bureau. The recommendations shall substantially embody the applicable provisions of a nationally recognized building code that is developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. The standards shall include the authority to permit or deny occupancy of existing and new buildings or structures and authority to accept or deny the use of materials manufactured within or without the state. The general construction bureau may set minimum fees or charges for conducting tests to verify claims or specifications of manufacturers.

D. The general construction bureau shall recommend to the commission additional specifications for any public building constructed in the state through expenditure of state, county or municipal funds, bonds and other revenues, which specifications shall embody standards making the building accessible to persons who have a physical disability, and the specifications shall conform substantially with those contained in a nationally recognized standard for making public facilities accessible to persons with a physical disability that is developed through an open, balanced consensus process. All orders and rules recommended by the general construction bureau and adopted by the commission under the provisions of this section shall be printed and distributed to all licensed contractors, architects and engineers and to the governor's commission on disability. The orders and rules shall take effect on a date fixed by the commission, which shall not be less than thirty days after their adoption by the commission, and shall have the force of law.

E. The general construction bureau shall have the right of review of all specifications of public buildings and the responsibility to ensure compliance with the adopted standards.

F. All political subdivisions of the state are subject to the provisions of codes adopted and approved under the Construction Industries Licensing Act. Such codes constitute a minimum requirement for the codes of political subdivisions.

G. The trade bureaus within their respective jurisdictions shall recommend to the commission standards that are developed through an open, balanced consensus process for the installation or use of electrical wiring, the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of mechanical installation and the construction, alteration or repair of all buildings intended for use by persons with a physical disability or persons requiring special facilities to accommodate the aged. The recommendations shall give due regard to physical, climatic and other conditions peculiar to New Mexico.

H. The trade bureaus within their respective jurisdictions shall recommend to the commission standards for the construction, alteration, repair, use or occupancy of manufactured commercial units, modular homes and premanufactured homes. The recommendations shall substantially embody the applicable provisions or standards for the safety to life, health, welfare and property approved by the nationally recognized standards association and developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. Wherever existing state codes or standards conflict with the codes and standards adopted by the commission under the provisions of this subsection, the provisions of the applicable New Mexico building codes adopted pursuant to the Construction Industries Licensing Act and the LPG and CNG Act [70-5-2 NMSA 1978] in effect at the applicable time shall exclusively apply and control, except for codes and standards for mobile housing units.

I. Modular homes and premanufactured homes in existence at the time of the effective date of the Construction Industries Licensing Act shall have their use or occupancy continued if such use or occupancy was legal on the effective date of that act, provided such continued use or occupancy is not dangerous to life. Any change in the use or occupancy or any major alteration or repair of a modular home or premanufactured home shall comply with all codes and standards adopted under the Construction Industries Licensing Act.

J. The commission shall review all recommendations made under the provisions of this section and shall by rule adopt standards and codes that substantially comply with the requirements of this section that apply to the recommendations of the trade bureaus.

History: 1953 Comp., § 67-35-52, enacted by Laws 1967, ch. 199, § 52; 1971, ch. 223, § 1; 1972, ch. 11, § 4; 1973, ch. 259, § 16; 1975, ch. 331, § 21; 1977, ch. 245, § 206; 1983, ch. 105, § 19; 1989, ch. 6, § 38; 2000, ch. 40, § 1; 2003, ch. 264, § 2; 2005, ch. 46, § 1; 2007, ch. 46, § 48.

Cross references. — For the commission on disability, see 28-10-1 to 28-10-8.1 NMSA 1978.

For the LPG and CNG Act, see 70-5-1 to 70-5-23 NMSA 1978.

Compiler's notes. — The "effective date of the Construction Industries Licensing Act", referred to in the first sentence in Subsection I, is July 1, 1967.

The 2007 amendment, effective June 15, 2007, made non-substantive language changes.

The 2005 amendment, effective June 17, 2005, changed the reference in Subsection D from committee on concerns of the handicapped to the commission on disability; and provided in Subsection H that applicable New Mexico building codes adopted pursuant to the Construction Industries Licensing Act and the LPG and CNG Act in effect at the applicable time control over conflicting codes and standards.

The 2003 amendment, effective June 20, 2003, rewrote this section.

The 2000 amendment, effective May 17, 2000, added the last sentence in Subsection B, deleted "and regulations" from the phrase "rules and regulations" throughout Subsection D, changed the "New Mexico Uniform Plumbing Code" and the "New Mexico Natural Gas Code" to read the "New Mexico Plumbing Code" and the "Natural Gas Code of New Mexico" in Subsection H, and substituted "rule" for "regulation" in Subsection J.

ANNOTATIONS

Enforcement of state building code. — The construction industries division of the regulation and

licensing department has the authority to refuse to provide inspection services or certify local inspectors in municipalities that fail to adopt a building code that provides for minimum requirements of the state Uniform Building Code. The construction industries division has the authority to issue a stop work or similar order on a construction project authorized by a local jurisdiction that has adopted a building code that, while the code meets minimum standards set by the CID, differs from the building code adopted by CID. 2011 Op. Att'y Gen. No. 11-06.

Construction Industries Licensing Act authorizes adoption of a statewide code. 1968 Op. Att'y Gen. No. 68-119.

Political subdivisions, not state, included under section. — This section only extends provisions of the codes adopted pursuant to the Construction Industries Licensing Act to political subdivisions of the state; it does not include the state itself. 1970 Op. Att'y Gen. No. 70-38.

Powers of general construction board. — This section empowers general construction board to do anything necessary to ensure that public buildings conform to adopted codes. Requiring building permits and performing inspections are powers necessary to ensure this conformity. Insofar as Attorney General's Opinion No. 70-38 is inconsistent with this opinion, it is amended accordingly. 1974 Op. Att'y Gen. No. 74-10.

Electrical contractor formerly under jurisdiction of electrical board. — Trade which is within jurisdiction of the former electrical board is that of electrical contractor, that is, a person engaged in the installation of electrical wiring. 1969 Op. Att'y Gen. No. 69-51.

60-13-45. Trade bureaus; permits.

A. The trade bureaus within their respective jurisdictions may require a permit to be secured and conspicuously posted prior to any construction, installation, alteration, repair or addition to or within any building, structure or premises.

B. No permit shall be required for the performance of any of the following classes of work:

(1) minor repairs, replacement of lamps, the connection of portable electrical equipment to suitable receptacles which are permanently installed, minor repairs or replacement of or to faucets, taps or jets or connection of portable equipment to suitable connections or inlets which have been permanently installed;

(2) installation of temporary wiring for testing electrical equipment or apparatus or installation of temporary fixtures or devices for testing fixtures, equipment, apparatus or appliances;

(3) installation, alteration or repair of electrical equipment for the operation of signals or the transmission of intelligence by wire; and

(4) installation or work which is done after regular business hours or during a holiday when immediate action is imperative to safeguard life, health or property, provided the person making the installation or performing the work applies for a permit covering the installation or work not later than the next business day.

C. If a permit has been issued for construction of a new residential building, that residential building shall not be occupied until a certificate of occupancy has been issued certifying compliance with all codes and standards.

D. The commission shall make rules and regulations pertaining to the issuance of permits and the setting of reasonable fees to be paid by the applicant for a permit. The regulations shall provide a procedure for the issuance of permits outside the corporate limits of a municipality where inspection is made by a state inspector or a municipal inspector serving as a part-time state inspector and for inspections within a municipality where the inspection is done exclusively by a full-time state inspector. Each trade bureau by regulation may require a reasonable bond or surety in the penal sum of five hundred dollars (\$500) or more, but not to exceed fifteen hundred dollars (\$1,500), with such bureau named as obligee and conditioned for the payment of inspection fees provided in the Construction Industries Licensing Act [60-13-1 NMSA 1978]. Nothing in this section shall preclude municipalities from making inspections in accordance with the Construction Industries Licensing Act or rules and regulations pursuant to that act or from establishing a schedule of fees to be paid by an applicant for a permit.

E. In the event that the division assumes inspections of a municipal or county jurisdiction, the permit fees shall be paid directly to the division.

History: 1953 Comp., § 67-35-53, enacted by Laws 1967, ch. 199, § 53; 1969, ch. 224, § 12; 1977, ch. 245, § 207; 1989, ch. 6, § 39.

ANNOTATIONS

Recovery by plumber obtaining permit while work in progress. — Plaintiff, a licensed plumber who obtained permit while work was in progress, contrary to former version of statute which required that permit be obtained before job began, could recover for labor performed and materials furnished where defendant was not injured by delay and where former 67-22-11, 1953 Comp., was silent on effect of failure to apply for permit. *Measday v. Sweazea*, 1968-NMCA-008, 78 N.M. 781, 438 P.2d 525.

Restrictions on municipal permitting or inspection. — The construction industries division of the regulation and licensing department does not have the authority to place special requirements on a local jurisdiction's approval of construction permits or inspection of construction projects. 2011 Op. Att'y Gen. 11-06

Failure to adopt temporary or permanent CID program requirements. — The construction industries division of the regulation and licensing department does not have the authority to refuse inspection services to a local jurisdiction because the local jurisdiction failed

to adopt temporary or permanent CID program requirements for the approval of construction permits or inspection of construction projects, 2011 Op. Att'y Gen. No. 11-06.

"Permit" as used in this section refers to a "building permit" or "installation permit." 1969 Op. Att'y Gen. No. 69-72.

Municipalities and trade boards not given coextensive authority. — It is unreasonable to interpret this section as giving municipalities and trade boards coextensive authority to require permits and inspections within municipalities. That interpretation would produce the possibility that citizens of a municipality might have to obtain two permits and submit to double inspections for their construction work, which would be contrary to purposes of the Construction Industries Licensing Act, one of which is to eliminate duplication of inspections. 1974 Op. Att'y Gen. No. 74-13.

Construction Industries Licensing Act covers practically entire field of construction industry and leaves municipalities only the right to make inspections or rules and regulations pursuant thereto, and to establish a schedule of fees to be paid by applicant for a permit. 1969 Op. Att'y Gen. No. 69-72.

Right of municipality to both license and regulate resident and nonresident contractors has been taken away by

the comprehensive nature of the Construction Industries Licensing Act except in certain minor respects. 1969 Op. Att'y Gen. No. 69-72.

Municipality's power to tax contractors. — Legislature intended all occupations should be taxed under former Section 3-38-3 NMSA 1978, and the mere fact they are not included in suggested classifications which a municipality could choose to use does not prevent taxation of resident or nonresident contractors with a minimum tax of \$5.00 and a maximum of \$25.00 for an occupation license, unless municipality has issued a license to a contractor under any other law. 1969 Op. Att'y Gen. No. 69-72.

Municipality's power to enact rules, make inspections. — All municipalities have power to enact rules and regulations and make inspections pursuant to the Construction Industries Licensing Act, and charge for building or installation permits, but can add no requirements whatsoever thereto, except possibly as to character and quality of installations, and even this admits of some doubt, if the work passes state inspection. 1969 Op. Att'y Gen. No. 69-72.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Building and Construction Contracts §§ 130, 131. 13 Am. Jur. 2d Buildings §§ 8 to 11.

60-13-46. Trade bureaus; annual permits.

A. In lieu of an individual permit for each installation, alteration or repair, an annual permit shall be issued, upon application, to any person, commercial or industrial plant or enterprise, governmental agency or political subdivision of the state that regularly employs one or more certified journeymen for installation, alteration, maintenance or repair on premises owned or occupied by the applicant for the permit.

B. The application for an annual permit shall be in writing to the appropriate trade bureau in whose jurisdiction the work is to be done.

C. Annual permit holders shall keep a record of all work done under the annual permit, and the appropriate trade bureau or its authorized employees shall have access to the record.

D. A reasonable fee established by the division shall be paid for each annual permit at the time of issuance. Inspection fees shall be collected at the time of each regular inspection of installations, alterations or repairs made under the annual permit. Fees received by a bureau under this subsection shall be remitted to the division.

E. Annual permits expire one year from their date of issuance.

History: 1953 Comp., § 67-35-54, enacted by Laws 1967, ch. 199, § 54; 1973, ch. 259, § 17; 1975, ch. 331,

§ 22; 1975, ch. 336, § 1; 1977, ch. 245, § 208; 1983, ch. 105, § 20; 1989, ch. 6, § 40.

60-13-47. Trade bureaus; connection to installation.

A. Except where work is done under an annual permit, no public utility shall make a connection from a supply of water or gas to an installation for which a permit is required, or which has been disconnected or ordered to be disconnected by the trade bureau having jurisdiction, without the authorization of the trade bureau having jurisdiction.

B. The public utility may make a connection from a supply of water or gas to an installation under the following circumstances:

(1) if within seven days after notification to the appropriate trade bureau of the completion of any work or installation the bureau has failed to approve or disapprove the connection; or

(2) if an installation or work is not located in any territory where there is an authorized inspector; provided, however, before any such connection is made by the public utility, the public utility must have received a written statement from the licensee declaring that the installation or work conforms with the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978] and the orders, rules and regulations, codes and minimum standards made pursuant to that act. The public utility shall immediately report to the proper trade bureau the receipt and contents of the statement. If it is discovered by the trade bureau that the declaration made in the statement is false, the trade bureau shall order the licensee making the statement to rectify the defects within five days after receipt of the written notice thereof from the bureau.

C. No public or municipally owned electric utility shall make a connection from a supply of electricity for which a permit is required without the approval of the electrical bureau or its authorized representative. In the event of an emergency, the electrical contractor shall issue a prefinal permit to the serving utility authorizing the service to be reconnected. The electrical contractor

shall report the emergency on the next working day to the electrical bureau or its authorized representative for inspection.

History: 1953 Comp., § 67-35-55, enacted by Laws 1967, ch. 199, § 55; 1977, ch. 245, § 209; 1983, ch. 105, § 21.

ANNOTATIONS

Indirect and purely economic harm is not the type of harm that the legislature sought to prevent in enacting this section, as this section is a health and safety measure. *McElhannon v. Ford*, 2003-NMCA-091, 134 N.M. 124, 73 P.3d 827.

Inspection of plumbing in public schools. — Municipal inspectors have authority to inspect plumbing installed in public schools, even though they may not collect a fee for such inspection. If the inspector does not conduct an inspection, or if no inspector has been appointed in the area to be inspected, the connection to the municipal water or sewer system can be made. 1961-62 Op. Att'y Gen. No. 61-15.

60-13-48. Repealed.

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-48 NMSA 1978, as amended by Laws 1977, ch. 245, § 210, relating to contractors' financial responsibility, effective

July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-48.1. Financial statements; confidentiality.

No information from financial statements obtained from applicants for licenses or licensees for the division's use in determining responsibility or maintaining proof of responsibility for the future shall be released unless in statistical form and classified to prevent identification of particular applicants. Any employee of the division, any former employee of the division or any other person who reveals to another individual any information which he is prohibited from lawfully revealing by provision of this section is guilty of a misdemeanor and shall upon conviction be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year, or both, and shall not be employed by the state for a period of five years after the date of the conviction.

History: 1978 Comp., § 60-13-48.1, enacted by Laws 1983, ch. 105, § 22; 1989, ch. 6, § 41.

60-13-49. Proof of responsibility.

A. No applicant for a contractor's license or for renewal of a contractor's license shall be issued a license until the director determines that the applicant furnishes proof of responsibility pursuant to Subsection B of this section.

B. Proof of responsibility shall be a bond of ten thousand dollars (\$10,000) acceptable to the director and underwritten by a corporate surety authorized to transact business in New Mexico. Such bond shall meet the following conditions:

(1) payments from a bond required pursuant to this section shall only be used to cure code violations caused by a licensee, certified by the division and not corrected by the licensee. Claims against the bond shall be made within two years following final inspection by the governmental entity having jurisdiction over code enforcement or within two years of issuance of a certificate of occupancy for the construction project, whichever is earlier;

(2) the total aggregate liability of the surety for all claims shall be limited to the face amount of the bond;

(3) the bond carrier shall provide to the division and to the licensee thirty days' prior written notice of intent to cancel a bond required pursuant to this section. The surety for such a bond shall remain liable under the provisions of the bond for all obligations of the principal pertaining to bond terms that occur before the bond is canceled, expires or otherwise becomes ineffective;

(4) failure to maintain the bond for the period required by law is cause for revocation of the license; and

(5) if the bond is canceled, expires or otherwise becomes ineffective during the period of a license, the division shall notify the licensee that a new bond is required. If the licensee has not

provided proof of a new bond before the fortieth day after the date on which the bond was canceled, expired or otherwise became ineffective, the license shall be subject to revocation for failure of proof of responsibility.

History: 1953 Comp., § 67-35-57, enacted by Laws 1967, ch. 199, § 57; 1969, ch. 224, § 13; 1977, ch. 245, § 211; 1985, ch. 153, § 1; 1989, ch. 6, § 42; 2008, ch. 38, § 1.

The 2008 amendment, effective July 1, 2009, deleted former Subsections B through J, which provided for the form and amounts of financial responsibility; for revocation of a license for failure to maintain proof of financial responsibility; for the limitation in actions on the proof of responsibility; and for cancellation of a license upon cancellation or expiration of a contractor's proof of responsibility; and added a new Subsection B.

claimed that attorneys' fees were not proper element of damages in suit based upon a statutory contractor's bond. *State ex rel. Dar Tile Co. v. Glens Falls Ins. Co.*, 1967-NMSC-206, 78 N.M. 435, 432 P.2d 400.

Judgment against principal was conclusive, absent fraud or collusion under former law. *State ex rel. Dar Tile Co. v. Glens Falls Ins. Co.*, 1967-NMSC-206, 78 N.M. 435, 432 P.2d 400.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 17 Am. Jur. 2d Contractors' Bonds § 1 et seq.

53 C.J.S. Licenses § 42.

ANNOTATIONS

Formerly, judgments against principal could not be collaterally attacked by surety because it was

60-13-50. Repealed.

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-50 NMSA 1978, as enacted by Laws 1967, ch. 199, § 58,

relating to exemptions, effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-51. Contractor's bond; municipal requirement prohibited.

No municipality shall require any person or corporation licensed under the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978] to file or obtain as a condition of doing business as a licensed contractor within the municipality any additional license bond as proof of responsibility if the person or corporation has met the responsibility requirements of the commission.

History: 1953 Comp., § 67-35-58.1, enacted by Laws 1971, ch. 233, § 1; 1977, ch. 245, § 212; 1989, ch. 6, § 43.

60-13-52. Penalty; misdemeanor.

A. Any person who acts in the capacity as a contractor within the meaning of the Construction Industries Licensing Act [60-13-1 NMSA 1978] without a license required by that act, and any person who holds himself out as a sales representative of a contractor which contractor is without a license as required by that act, is guilty of a misdemeanor, and upon conviction therefor the court shall:

(1) where the dollar value of the contracting work is five thousand dollars (\$5,000) or less, sentence the person to be imprisoned in the county jail for a term of ninety days or to the payment of a fine of not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500), or to both such imprisonment and fine in the discretion of the court; and

(2) where the dollar value of the contracting work exceeds five thousand dollars (\$5,000), sentence the person to be imprisoned in the county jail for a term of six months or to the payment of a fine of ten percent of the dollar value of the contracting work, or to both such imprisonment and fine in the discretion of the court.

B. Any person who acts in the capacity as a journeyman within the meaning of the Construction Industries Licensing Act without holding a valid certificate of competence issued by the division is guilty of a misdemeanor, and upon conviction therefor the court shall sentence the person to be imprisoned in the county jail for a term of ninety days or to payment of a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300), or to both such imprisonment and fine.

C. Any person who, after having been convicted and sentenced in accordance with the provisions of either Subsection A or Subsection B of this section, is again convicted pursuant to the provisions of this section shall be sentenced to twice the applicable penalty imposed by the provisions of this section.

D. In the case of a first conviction under this section, the court may impose a deferred sentence on the condition that the person comply with the provisions for licensure pursuant to Subsection D of Section 60-13-14 NMSA 1978.

History: 1953 Comp., § 67-35-59, enacted by Laws 1977, ch. 377, § 6; 1979, ch. 274, § 1; 1989, ch. 6, § 44.

Repeals and reenactments. — Laws 1977, ch. 377, § 6, repealed former 67-35-59, 1953 Comp., relating to penalties, and enacted a new 67-35-59, 1953 Comp.

ANNOTATIONS

Legislature casts harsh eye on contracting without a license. *Gamboa v. Urena*, 2004-NMCA-053, 135 N.M. 515, 90 P.3d 534, cert. denied, 2004-NMCERT-005, 135 N.M. 656, 92 P.3d 10.

Acting in capacity of contractor without required license is a misdemeanor. *Fleming v. Phelps-Dodge Corp.*, 1972-NMCA-060, 83 N.M. 715, 496 P.2d 1111.

Evidence sufficient for conviction. — Conviction for contracting without a license was supported by sufficient

evidence, where, although the contract stated that another firm would perform any work requiring a contractor's license, the contract was written on a form with the defendant's trade name and address at the top and was an undertaking for the entire project, for which the defendant remained responsible. *State v. Jenkins*, 1989-NMCA-044, 108 N.M. 669, 777 P.2d 908.

Jurisdiction of justices of the peace. — Justices of the peace did not have jurisdiction to try cases arising out of a violation of 67-22-21, 1953 Comp., of the former Plumbing Administrative Act. 1964 Op. Att'y Gen. No. 64-14.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 70 to 80.

53 C.J.S. Licenses §§ 78 to 81.

60-13-53. Commission or division; powers of injunction; mandamus.

The commission or division may enforce in the district court of the county in which the offense was committed the provisions of the Construction Industries Licensing Act [60-13-1 NMSA 1978] by injunction, mandamus or any proper legal proceeding.

History: 1953 Comp., § 67-35-60, enacted by Laws 1967, ch. 199, § 60; 1977, ch. 245, § 213; 1989, ch. 6, § 45.

60-13-54. Continuation of license.

Any person who, at the time of the passage and approval of the Construction Industries Licensing Act [60-13-1 NMSA 1978], is engaged in any occupation, trade or activity related thereto, pursuant to a valid license authorizing such acts and operations issued under laws repealed by this act and rules and regulations pursuant thereto, is entitled to continue such act and operations, and the license shall continue in effect until the expiration date thereof, subject in all cases to suspension or revocation as provided by the Construction Industries Licensing Act.

History: 1953 Comp., § 67-35-61, enacted by Laws 1967, ch. 199, § 61.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Exception of existing buildings or businesses from statute or

ordinance enacted in exercise of police or license taxing power, as unconstitutional discrimination, 136 A.L.R. 207.

60-13-55. Continuation of construction codes and standards.

Any code and minimum standard related to the construction, alteration, installation or repair of a private or public building, or installation on public or private premises, in effect at the time of passage and approval of the Construction Industries Licensing Act [60-13-1 NMSA 1978] shall continue in effect until the commission and trade bureaus created by the Construction Industries Licensing Act amend or revise those codes and minimum standards pursuant to provisions of the Construction Industries Licensing Act.

History: 1953 Comp., § 67-35-62, enacted by Laws 1967, ch. 199, § 62; 1977, ch. 245, § 214; 1989, ch. 6, § 46.

60-13-56. Repealed.

Repeals. — Laws 1989, ch. 6, § 67 repeals 60-13-56 NMSA 1978, as amended by Laws 1977, ch. 245, § 215, relating to transfer of property, supplies and records,

effective July 1, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

60-13-57. Hearing officer authorized.

The commission may designate a hearing officer to preside over and take evidence at any hearing held pursuant to the Construction Industries Licensing Act [60-13-1 NMSA 1978]. Hearing officers may be employees or individuals hired outside the division by contract or on a case by case basis as determined by the commission.

History: 1953 Comp., § 67-35-64, enacted by Laws 1973, ch. 229, § 5 and Laws 1973, ch. 259, § 9; 1977, ch. 245, § 216; 1989, ch. 6, § 47.

Compiler's notes. — Laws 1973, ch. 229, § 5 and ch. 259, § 9 enact identical new sections which are compiled as the above section.

60-13-58. Repealed.

Repeals. — Laws 2005, ch. 208, § 27 repealed 60-13-58 NMSA 1978, effective June 17, 2005, which would have repealed the Construction Industries Licensing Act on

July 1, 2006. For provisions of former section, see the 2004 NMSA 1978 on the *NMOneSource.com*.

60-13-59. Building permits; contents; display.

Every building permit or notice of permit required under the provisions of a building code shall:

- A. clearly indicate the name and address of the owner of the property;
- B. contain a legal description of the property being built upon, either by "lot and block" description in a subdivision, by street address in a municipality or by township, range and section numbers if outside a municipality or platted subdivision;
- C. contain the name, address and license number of the general contractor, where applicable; and
- D. be prominently displayed on the site where the construction or work is to be performed.

History: Laws 1987, ch. 209, § 1.

ARTICLE 13A**Employee Leasing**

Sec.

60-13A-1. Short title.

60-13A-2. Definitions.

60-13A-3. Registration as an employee leasing contractor required as condition to do business in the state.

60-13A-4. License requirements for certain employee leasing contractors.

60-13A-5. Compliance with and applicability of workers' compensation laws.

60-13A-6. Registration application; contents.

60-13A-7. Surety requirements for employee leasing contractors.

Sec. 60-13A-8. Department to adopt regulations to implement act.

60-13A-8. Department to adopt regulations to implement act.

60-13A-9. Agreement required.

60-13A-10. Employment contributions; benefits; tax withholding.

60-13A-11. Revocation of registration; disciplinary proceedings.

60-13A-12. Criminal penalty.

60-13A-13. Civil penalties and remedies.

60-13A-14. Disclosure to clients required.

60-13A-1. Short title.

This act [60-13A-1 to 60-13A-14 NMSA 1978] may be cited as the "Employee Leasing Act".

History: Laws 1993, ch. 162, § 1.

60-13A-2. Definitions.

As used in the Employee Leasing Act [60-13A-1 NMSA 1978]:

- A. "applicant" means a person applying for registration as an employee leasing contractor;
- B. "client" means a person who obtains workers through an employee leasing arrangement;
- C. "department" means the regulation and licensing department;
- D. "employee leasing arrangement" means any arrangement in which a client contracts with an employee leasing contractor for the contractor to provide leased workers to the client; provided, "employee leasing arrangements" does not include temporary workers;
- E. "employee leasing contractor" means any person who provides leased workers to a client in New Mexico through an employee leasing arrangement;
- F. "leased worker" means a worker provided to a client through an employee leasing arrangement; provided that if a worker works and should be classified in any construction class or in any oil and gas well service or drilling class pursuant to provisions of or regulations adopted under the New Mexico Insurance Code [59A-1-1 NMSA 1978], the worker shall be presumed to be a leased worker and the employee leasing contractor that provides the worker shall comply with the provisions of the Employee Leasing Act [60-13A-1 NMSA 1978];
- G. "person" means an individual or any other legal entity;
- H. "temporary services employer" means an employing unit that contracts with clients or customers to provide workers to perform services for the client or customer and performs all of the following functions:
 - (1) negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality and price of the services;
 - (2) determines assignments of workers, even though workers retain the right to refuse specific assignments;
 - (3) retains the authority to reassign or refuse to reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer;
 - (4) assigns the worker to perform services for a client or customer;
 - (5) sets the rate of pay for the worker, whether or not through negotiation; and
 - (6) pays the worker directly; and
- I. "temporary worker" means a worker employed or provided by a temporary services employer to support or supplement another's work force in special work situations, such as employee absences, temporary skill shortages, temporary provision of specialized professional skills, seasonal workloads and special temporary assignments, including the production of motion pictures, television programs and other commercial media projects; provided that if a worker who is employed or provided by a temporary services employer works and should be classified in any construction class or in any oil and gas well service or drilling class pursuant to provisions of or regulations adopted under the New Mexico Insurance Code [59A-1-1 NMSA 1978], the worker shall be presumed to be a temporary worker and the temporary services employer that provides the worker shall comply with the provisions of the Employee Leasing Act [60-13A-1 NMSA 1978].

History: Laws 1993, ch. 162, § 2; 2003, ch. 242, § 1.

The 2003 amendment, effective July 1, 2003, rewrote Subsection F; inserted present Subsection H; redesignated

former Subsection H as Subsection I and substituted "employed or provided by a temporary services" for "hired and employed by an" and added the proviso at the end.

60-13A-3. Registration as an employee leasing contractor required as condition to do business in the state.

- A. No person shall do business in the state as an employee leasing contractor unless the person is registered with the department.
- B. Registration shall be renewed annually. The renewal date shall be the first day of the month one year after the month in which the initial registration occurred.
- C. Applications for initial registration and renewals of registration shall be made on forms supplied by the department and shall contain the information required by Section 6 [60-13A-6

NMSA 1978] of the Employee Leasing Act. The department may by regulation require additional information for initial registration and renewal of registration.

D. Upon initial registration an employee leasing contractor shall pay a fee to the department of one thousand dollars (\$1,000). On the annual renewal date the employee leasing contractor shall pay an annual renewal fee of one thousand dollars (\$1,000).

E. Neither the initial registration fee nor the renewal fee is refundable.

F. If a registered employee leasing contractor does not submit a completed renewal application within thirty days after the annual renewal date, the department shall mail a notice to the contractor by certified mail, return receipt requested, which notice shall inform the contractor that unless the renewal fee is paid within thirty days of the receipt of the notice by the contractor, together with a delinquency charge of five hundred dollars (\$500), the contractor's registration shall be canceled. The department shall cancel the registration of any contractor who does not comply with the requirements for payment of a renewal fee and a delinquency charge.

History: Laws 1993, ch. 162, § 3.

ANNOTATIONS

Contractor was unlicensed but contract was not void. — General contractor's payment bond issuer was

liable to the leasing contractor when the general contractor defaulted on payment even though employee leasing contractor was not licensed under this section. *Eastland Fin. Servs. v. Mendoza*, 2002-NMCA-035, 132 N.M. 24, 43 P.3d 375.

60-13A-4. Licensure requirements for certain employee leasing contractors.

An existing employee leasing contractor domiciled in New Mexico as of September 30, 1993 shall be issued an employee leasing contractor's license upon application.

History: Laws 1993, ch. 162, § 4; 1995, ch. 24, §1.

The 1995 amendment, effective June 16, 1995, re-wrote the section.

60-13A-5. Compliance with and applicability of workers' compensation laws.

A. Every employee leasing contractor shall comply with the provisions of Section 52-1-4 NMSA 1978, and that compliance shall be a condition precedent to initial registration. Failure to maintain compliance with the cited law shall result in the immediate revocation of any registration or license held by the noncomplying employee leasing contractor in addition to any other sanctions that may be imposed under applicable laws or regulations.

B. Workers' compensation insurance or self-insurance applicable to leased workers shall cover the employee leasing contractor and the client as co-insureds. Workers' compensation insurance applicable to leased employees may be provided in any manner authorized by and in compliance with regulations of the superintendent of insurance issued pursuant to Section 59A-2-9.1 NMSA 1978.

C. The employee leasing contractor and the client shall be deemed co-employers of leased workers for purposes of the Workers' Compensation Act [52-1-1 NMSA 1978]. The Workers' Compensation Act shall constitute leased workers' exclusive remedy against both the employee leasing contractor and the client if the conditions of Section 52-1-9 NMSA 1978 are satisfied.

History: Laws 1993, ch. 162, § 5; 1995, ch. 24, §2.

The 1995 amendment, effective June 16, 1995, inserted "and applicability of" in the section heading;

designated the existing provisions as Subsection A and made a stylistic change therein; and added Subsections B and C.

60-13A-6. Registration application; contents.

A. An application for registration as an employee leasing contractor shall be signed by an individual for the applicant and verified by the applicant under oath before a notary public. It shall contain:

- (1) the applicant's full name, the title of the applicant's position with the employee leasing contractor and a statement that the applicant is authorized to act on behalf of the employee leasing contractor in connection with the application;
- (2) the business name, if any, of the applicant;
- (3) the applicant's legal entity status;
- (4) if the applicant is an individual, the applicant's:
 - (a) age; and
 - (b) date and place of birth;
- (5) the applicant's state and federal tax identification numbers and employer identification number;
- (6) the current residence street or location address of the principal office of the applicant and a current mailing address if different from the residency address;
- (7) a signature by:
 - (a) an individual sole proprietor if the applicant is a proprietorship;
 - (b) each of the general partners if the applicant is a partnership; or
 - (c) a corporate officer having authority to make the application if the applicant is a corporation;
- (8) for a corporate applicant, the name and residence street address of the corporation's agent for the service of process; and
- (9) proof of compliance with Section 60-13A-5 NMSA 1978.

B. Changes in information required to be included in the application for registration as an employee leasing contractor shall be reported to the department by the employee leasing contractor within thirty days of the date the change occurs. Failure by the employee leasing contractor to comply with this requirement constitutes cause for the department to cancel the employee leasing contractor's registration.

History: Laws 1993, ch. 162, § 6; 2021, ch. 70, § 6.

The 2021 amendment, effective June 18, 2021, removed the requirement that an application for registration as an employee leasing contractor contain the applicant's social security number, and made technical

amendments; and in Subparagraph A(4)(b), after "place of birth", deleted "and social security number", and in Paragraph A(9), after "Section", changed "5 of the Employee Leasing Act" to "60-13A-5 NMSA 1978".

60-13A-7. Surety requirements for employee leasing contractors.

A. An employee leasing contractor domiciled and registered in New Mexico as of September 30, 1993 shall file and maintain with the department a surety bond in the amount of twenty-five thousand dollars (\$25,000) issued by an insurance company authorized to do business in this state. An employee leasing contractor domiciled and registered in New Mexico after September 30, 1993 shall file and maintain with the department a surety bond in the amount of one hundred thousand dollars (\$100,000) issued by an insurance company authorized to do business in this state. Interest accrued on such liquid securities shall be paid to the employee leasing contractor providing the liquid security. The bond shall be conditioned upon the prompt payment of wages for which the employee leasing contractor becomes liable. The employee leasing contractor's liability for these wages shall terminate six months after the employee leasing contractor terminates his employee leasing business.

B. In lieu of the surety bond required under Subsection A of this section, the employee leasing contractor may deposit with a depository designated by the department liquid securities with a market value equal to the amount required for a surety bond. The deposit contract shall authorize the department to liquidate the securities to the extent necessary to pay any obligations that the employee leasing contractor fails to pay promptly when due.

History: Laws 1993, ch. 162, § 7; 1995, ch. 24, § 3.

The 1995 amendment, effective June 16, 1995, rewrote Subsection A.

60-13A-8. Department to adopt regulations to implement act.

The department shall adopt regulations to implement the provisions of the Employee Leasing Act [60-13A-1 NMSA 1978].

History: Laws 1993, ch. 162, § 8.

60-13A-9. Agreement required.

The employment relationship between the client and the leased workers shall be established by written agreement between the employee leasing contractor and the client. Written notice of the employment relationship and of compliance with the requirements of Section 52-1-4 NMSA 1978 shall be given by the contractor to each leased worker.

History: Laws 1993, ch. 162, § 9.

60-13A-10. Employment contributions; benefits; tax withholding.

An employee leasing contractor shall provide any benefits required by law to be provided employees by employers. The contractor shall provide to the department proof of any required insurance benefits prior to registration or renewal of registration.

History: Laws 1993, ch. 162, § 10.

60-13A-11. Revocation of registration; disciplinary proceedings.

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 NMSA 1978], the department may revoke the registration of any employee leasing contractor upon grounds that the contractor:

- (1) is guilty of fraud, deception or misrepresentation in procuring registration under the Employee Leasing Act [60-13A-1 NMSA 1978];
- (2) has willfully or negligently violated any provision of the Employee Leasing Act or any of the rules or regulations of the department pursuant to that act; or
- (3) has not maintained the surety bond or complied with the deposit requirements pursuant to Section 7 [60-13A-7 NMSA 1978] of the Employee Leasing Act.

B. Disciplinary proceedings may be instituted by sworn complaint of any person and shall conform with the provisions of the Uniform Licensing Act.

C. An employee leasing contractor whose registration has been revoked may reapply for registration after a period of two years from the date the revocation is effective.

History: Laws 1993, ch. 162, § 11.

60-13A-12. Criminal penalty.

Any person doing business in this state as an employee leasing contractor without being registered as required under the Employee Leasing Act [60-13A-1 NMSA 1978] is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1993, ch. 162, § 12.

60-13A-13. Civil penalties and remedies.

A. Any employee leasing contractor who violates any provision of the Employee Leasing Act [60-13A-1 NMSA 1978] may be fined by the department for the violation in the amount of one

thousand dollars (\$1,000) and, if it is a continuing violation, the department may impose a fine of one thousand dollars (\$1,000) for each day during which the violation continues.

B. The department may bring an action in a court of competent jurisdiction to enjoin any person from violating any provisions of the Employee Leasing Act.

C. A client, a leased employee or other person who suffers damages proximately caused by the failure of an employee leasing contractor to comply with the Employee Leasing Act may bring an action in any court of competent jurisdiction to recover the damages incurred.

D. If a person is determined to have violated the provisions of the Employee Leasing Act by the department or a court of competent jurisdiction, that person shall be liable for the expenses incurred by the department in investigating and enforcing the provisions of that act and also for reasonable attorneys' fees and costs incurred by the department in a court action.

History: Laws 1993, ch. 162, § 13.

60-13A-14. Disclosure to clients required.

An employee leasing contractor shall disclose to a client the services to be rendered by the contractor, the costs of those services and a description of the respective rights and obligations of the parties prior to entering into an employee leasing arrangement with the client.

History: Laws 1993, ch. 162, § 14.

Severability. — Laws 1993, ch. 162, § 15 provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 14

Manufactured Housing

Sec.	Sec.
60-14-1. Short title.	60-14-12. Suspension and revocation.
60-14-2. Definitions.	60-14-13. Transition.
60-14-3. Purpose.	60-14-14. Hearing officer.
60-14-4. Powers and duties of division.	60-14-15. Committee and division; consumer complaints; orders; suspension; revocation.
60-14-5. Manufactured housing committee created; membership; compensation; duties.	60-14-16. Repealed.
60-14-6. Bonding requirements; dealers, brokers, salespersons, manufacturers, repairmen and installers.	60-14-17. Unlicensed dealers, brokers, salespersons, repairmen, manufacturers and installers; penalties.
60-14-7. License required; classification; examination.	60-14-18. Committee or division; powers of injunctions; mandamus.
60-14-8. Licensure; exemption.	60-14-19. Penalties.
60-14-9. License; application; issuance.	60-14-20. Criminal offenders character evaluation.
60-14-10. Qualifying party; examination; certificate.	
60-14-11. Division fees.	

60-14-1. Short title.

Chapter 60, Article 14 NMSA 1978 may be cited as the "Manufactured Housing Act."

History: 1953 Comp., § 67-41-1, enacted by Laws 1975, ch. 331, § 1; 1983, ch. 295, § 7.

ANNOTATIONS

Jurisdiction over installation of gas lines. — The Mobile Housing Act does not supersede or repeal by

implication the Liquefied Petroleum Gas Act, Section 70-5-1 NMSA 1978 et seq., with respect to jurisdiction over the installation of liquefied petroleum gas lines within a mobile housing unit. 1976 Op. Att'y Gen. No. 76-38.

60-14-2. Definitions.

As used in the Manufactured Housing Act:

A. "broker" means any person who, for a fee, commission or valuable consideration, lists, sells, offers for sale, exchanges, offers to exchange, rents or leases or offers to rent or lease pre-owned

manufactured homes for another person or who negotiates, offers to negotiate, locates or brings together a buyer and a seller or offers to locate or bring together a buyer and a seller in conjunction with the sale, exchange, rental or lease of a pre-owned manufactured home. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange or lease-purchase of two or more pre-owned manufactured homes to consumers in any consecutive twelve-month period;

B. "certificate of qualification" means a certificate issued by the division to a qualifying party;

C. "committee" means the manufactured housing committee;

D. "consumer" means any person who seeks or acquires by purchase, exchange or lease-purchase a manufactured home;

E. "dealer" means any person engaged in the business of buying for resale, selling or exchanging manufactured homes or offering manufactured homes for sale, exchange or lease-purchase to consumers. No person shall be considered a dealer unless engaged in the sale, exchange or lease-purchase of two or more manufactured homes to consumers in any consecutive twelve-month period. A dealer may also engage in any brokerage activities included under the definition of broker in this section; provided that "dealer" shall not include:

(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(2) public officers while performing their duties as such officers; and

(3) finance companies, banks and other lending institutions covering sales of repossessed manufactured houses;

F. "director" means the director of the division;

G. "division" means the manufactured housing division of the regulation and licensing department;

H. "inspection agency" means any firm, partnership, corporation, association or any combination thereof approved in accordance with regulations adopted by the division as having the personnel and equipment available to adequately inspect for the proper construction of manufactured homes or house trailers not used exclusively for recreational purposes;

I. "inspector" means a person appointed by the division as being qualified to adequately inspect the construction, electrical installations and mechanical installations of manufactured homes and their repair and modification, as well as the installation, tie-downs, blocking, skirting and water, gas and sewer connections of any manufactured homes in New Mexico;

J. "installer" means any person who installs manufactured homes for remuneration;

K. "installation" means, but is not limited to, preparation by an installer of a manufactured home site, construction of tie-down facilities and connection to on-site utility terminals;

L. "manufacturer" means any resident or nonresident person who manufactures or assembles manufactured homes or any component of manufactured homes;

M. "manufactured home" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and that may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one integral unit, as well as a single unit. "Manufactured home" does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property. "Manufactured home" includes any movable or portable housing structure over twelve feet in width and forty feet in length that is used for nonresidential purposes;

N. "permit" means a certificate issued by the division to the dealer or installer of a manufactured home indicating that the manufactured home meets the minimum requirements for occupancy provided for by codes or regulations of the division;

O. "person" includes an individual, firm, partnership, corporation, association or other legal entity or any combination thereof;

P. "qualifying party" means any individual who submits to the examination for a license, other than a broker's or salesperson's license, to be issued under the Manufactured Housing Act to a licensee, other than an individual, and who after passing such an examination is responsible for the

licensee's compliance with the requirements of that act and with the rules, regulations, codes and standards adopted and promulgated in accordance with the provisions of the Manufactured Housing Act;

Q. "repairman" means any person who, for remuneration or consideration, modifies, alters or repairs the structural, mechanical or electrical systems of a manufactured home; and

R. "salesperson" means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured homes to consumers as an employee or agent of a dealer.

History: 1953 Comp., § 67-41-2, enacted by Laws 1978, ch. 79, § 1; 1983, ch. 295, § 8; 1988, ch. 102, § 3; 2013, ch. 36, § 1; 2019, ch. 122, § 1.

Repeals and reenactments. — Laws 1978, ch. 79, § 1, repealed former 67-41-2, 1953 Comp. (former 60-14-2 NMSA 1978), as amended by Laws 1977, ch. 341, § 1, relating to definitions used in the Mobile Housing Act, and enacted a new 67-41-2, 1953 Comp.

The 2019 amendment, effective July 1, 2019, revised the definition of "director" as used in the Manufactured Housing Act; in Subsection F, after "director of the", deleted "manufactured housing", and after "division", deleted "and the construction industries division of the regulation and licensing department".

The 2013 amendment, effective June 14, 2013, clarified the definition of "director"; and in Subsection F, after "manufactured housing", added "division and the" and after "construction industries division", added "of the regulation and licensing department".

60-14-3. Purpose.

It is the intent of the legislature that the large and growing manufactured housing industry be supervised and regulated by a division of the commerce and industry department [regulation and licensing department]. The purpose of the Manufactured Housing Act [60-14-1 NMSA 1978] is to insure the purchasers and users of manufactured homes the essential conditions of health and safety which are their right and to provide that the business practices of the industry are fair and orderly among the members of the industry with due regard to the ultimate consumers in this important area of human shelter.

History: 1953 Comp., § 67-41-3, enacted by Laws 1975, ch. 331, § 3; 1977, ch. 245, § 218; 1983, ch. 295, § 9.

Bracketed material. — Laws 1983, ch. 297, § 20, creates the regulation and licensing department, consisting of several divisions, including the mobile housing division, and Laws 1983, ch. 297, § 31, provides that all references in law to the mobile housing division of the commerce and industry department shall be construed to be references to the same division within the regulation and licensing department. See 9-16-4 NMSA 1978 and notes

thereto. The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of zoning ordinances prohibiting or regulating outside storage of house trailers, motor homes, campers, vans and the like, in residential neighborhoods, 95 A.L.R.3d 378.

60-14-4. Powers and duties of division.

The division shall:

A. prepare, administer and grade examinations for licensure under the classification sought by each applicant;

B. issue licenses and certificates of qualification in accordance with the provisions of the Manufactured Housing Act;

C. establish and collect fees authorized to be collected by the division pursuant to the Manufactured Housing Act;

D. subject to the approval of the committee, adopt rules and regulations relating to the construction, repair, modification, installation, tie-down, hookup and sale of all manufactured homes,

which regulations shall be uniform throughout the state and shall be enforced by inspectors for the division to insure minimum standards of safety within the state and any of its political subdivisions. Ordinances of any political subdivision of New Mexico relating to gas, including natural gas, liquefied petroleum gas or synthetic natural gas; electricity; sanitary plumbing; and installation or sale of manufactured homes shall not be inconsistent with any rules, regulations, codes or standards adopted by the division pursuant to the Manufactured Housing Act;

E. adopt a budget and submit it to the regulation and licensing department for approval;

F. make an annual report to the superintendent of regulation and licensing concerning the operations of the division. The report shall contain the division's recommendations for legislation that it deems necessary to improve the licensing and the ethical and technical practices of the manufactured housing industry and to protect the public welfare;

G. subject to the approval of the committee, adopt such rules, regulations, codes and standards as are necessary to carry out the provisions of the Manufactured Housing Act;

H. prepare a uniform manufacturer's warranty and require its adoption as a condition of licensure by all manufacturers of manufactured homes doing business in New Mexico;

I. subject to the approval of the committee, adopt by regulation the mobile home construction and safety standards contained in the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended;

J. subject to the approval of the committee, adopt by regulation the mobile home procedural and enforcement regulations, 24 C.F.R. 3282, as amended, promulgated by the department of housing and urban development pursuant to the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended;

K. issue permits and provide for a single inspection of every installation in New Mexico, regardless of the location;

L. subject to the approval of the committee, adopt regulations prescribing standards for the installation or use of electrical wiring; the installation of all fixtures, plumbing, consumer's gas pipe, including natural gas, liquefied petroleum gas and synthetic natural gas, appliances and materials installed in the course of mechanical installation; and the construction, alteration, installation and repair of all manufactured homes intended for use in flood or mudslide areas designated pursuant to Section 3-18-7 NMSA 1978. The regulations shall give due regard to standards prescribed by the federal insurance administration pursuant to regulation 1910, Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 5757, all as amended, and shall give due regard to physical, climatic and other conditions peculiar to New Mexico;

M. conduct "inspector schools" so that each inspector under the division's jurisdiction is capable of giving a complete one-time inspection for the sufficiency of unit installation, construction and mechanical and electrical systems;

N. enter into cooperative agreements with federal agencies relating to manufactured housing and accept and use federal grants, matching funds or other financial assistance to further the purposes of the Manufactured Housing Act. The division may enter into agreements with municipalities and counties to provide for the inspection of manufactured homes by employees of municipalities and counties, to be performed under the supervision and control of the division. The division may allow all or a portion of the inspection fee collected by a local public body to be retained by the local public body. The portion of the fee retained shall be determined by the division and shall be related to the completeness of the inspection performed;

O. administer oaths through any member of the division, the director or a hearing officer;

P. subject to the approval of the committee, adopt rules and regulations for the conducting of hearings and the presentation of views, consistent with the regulations promulgated by the department of housing and urban development, 24 C.F.R. 3282.151 through 3282.156, as amended;

Q. subject to the approval of the committee, adopt by regulation a requirement that dealers, repairmen and installers provide to consumers warranties on their product and work and prescribe by regulation minimum requirements of such warranties;

R. coordinate with and qualify inspectors for any multiple inspection program provided by the construction industries division of the regulation and licensing department for inspection of manufactured homes;

S. subject to the approval of the committee, adopt regulations, codes and standards for manufactured homes used for nonresidential purposes; provided such manufactured homes being used for nonresidential purposes on May 18, 1988 shall not be required to meet Uniform Building Code standards, except as to requirements for access to the handicapped, but manufactured homes being used for nonresidential purposes after May 18, 1988 shall be required to meet Uniform Building Code standards. None of the provisions contained in this subsection shall apply to retailers licensed by the motor vehicle division of the taxation and revenue department; and

T. with the approval of the superintendent of regulation and licensing, employ such personnel as the director deems necessary for the exclusive purposes of investigating violations of the Manufactured Housing Act, enforcing Section 60-14-17 NMSA 1978 and instituting legal action in the name of the division to enforce the provisions of Section 60-14-19 NMSA 1978.

History: 1953 Comp., § 67-41-6, enacted by Laws 1978, ch. 80, § 1; 1983, ch. 295, § 10; 1988, ch. 102, § 4; 2007, ch. 62, § 1.

Cross references. — For the motor vehicle division of the taxation and revenue department, see 66-2-1 NMSA 1978 et seq.

For the Federal Regulation 1910, see 44 C.F.R. § 60.1 et seq.

Repeals and reenactments. — Laws 1978, ch. 80, § 1, repealed former 67-41-6, 1953 Comp. (former 60-14-4 NMSA 1978), relating to powers and duties, and enacted a new 67-41-6, 1953 Comp.

The 2007 amendment, effective June 15, 2007, added Subsection T to permit the division to employ personnel

exclusively to investigate violations and enforce the Manufactured Housing Act.

ANNOTATIONS

Shared jurisdiction over liquefied petroleum gas line installations. — Mobile Housing Act in no way confers on the mobile housing commission (now mobile housing division) exclusive jurisdiction over liquefied petroleum gas line installations within mobile housing units. Both the mobile housing commission and the liquefied petroleum gas commission (now liquefied petroleum gas bureau) have jurisdiction to regulate and inspect the installation of liquefied petroleum gas lines in mobile homes. 1976 Op. Att'y Gen. No. 76-38.

60-14-5. Manufactured housing committee created; membership; compensation; duties.

A. There is created within the division the "manufactured housing committee". It shall be composed of seven members who are residents of New Mexico and who shall serve at the pleasure of the governor and be appointed by the governor as follows:

(1) one member who is or is the designated representative of a manufacturer licensed under the Manufactured Housing Act;

(2) one member who is or is the qualifying party of a dealer licensed under the Manufactured Housing Act;

(3) one member who is or is the qualifying party of an installer licensed under the Manufactured Housing Act;

(4) one member who is the owner of a manufactured housing dealership licensed under the Manufactured Housing Act;

(5) one member who is engaged in the business of financing the purchase of manufactured housing units; and

(6) two public members who are manufactured housing unit owners not subject to licensure under the Manufactured Housing Act.

The term of office of each member of the committee is four years; provided that members shall be appointed for staggered terms beginning July 1, 1983 so that two terms end on June 30, 1985, two terms end on June 30, 1986 and three terms end on June 30, 1987. Thereafter, all members shall be appointed to four-year terms. Members shall be appointed to provide adequate representation of all geographic areas of the state.

B. Each member of the committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

C. The committee shall annually elect a chair and vice chair from its membership. The director of the division shall serve as the executive secretary of the committee.

D. The committee shall meet at least bimonthly at the call of the chair.

E. The committee shall provide technical and policy advice to the division, review and approve or disapprove all rules, regulations, standards and codes subject to its approval under the provisions of the Manufactured Housing Act and:

- (1) establish by regulation classifications of licenses issued by the division and qualifications and examinations necessary for licensure under the Manufactured Housing Act; and
- (2) suspend or revoke for cause any license or certificate of qualification issued by the division.

History: 1953 Comp., § 67-41-6.1, enacted by Laws 1977, ch. 245, § 220; 1983, ch. 295, § 11; 2013, ch. 36, § 2.

Cross references. — For termination of committee, see 60-14-16 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed the composition of the manufacturing housing

committee; in Paragraph (4) of Subsection A, after "member who is", deleted "a broker" and added "the owner of a manufactured housing dealership"; added Paragraph (5) of Subsection A; and in Paragraph (8) of Subsection A, at the beginning of the sentence, deleted "three members" and added "two public members".

60-14-6. Bonding requirements; dealers, brokers, salespersons, manufacturers, repairmen and installers.

A. The division, with the approval of the committee, may by regulation require each dealer, broker, salesperson, manufacturer, repairman and installer to furnish and maintain with the division a consumer protection bond underwritten by a corporate surety authorized to transact business in New Mexico, in a sum to be determined by regulation and in such form, and with either unit or blanket coverage, as required by regulation, to be conditioned upon the dealer, broker, salesperson, manufacturer, repairman or installer complying with the provisions of the Manufactured Housing Act [60-14-1 NMSA 1978] and any other law applying to the licensee, and also as indemnity for any loss sustained by any person damaged:

- (1) as a result of a violation by the licensee of any provision of the Manufactured Housing Act or of any regulation of the division adopted pursuant to that act;
- (2) as a result of a violation of any regulation adopted by the division;
- (3) by fraud of a licensee in the execution or performance of a contract; or
- (4) by misrepresentation or the making of false promises through the advertising or the agents of a licensee.

B. The consumer protection bond may include provisions for the indemnification for any loss sustained by any consumer as the result of the refusal, failure or inability to transfer good and sufficient legal title to the consumer by the transferor or any other party claiming title.

C. The committee may attach and disburse for cause any consumer protection bond furnished to the division pursuant to this section. The division, subject to the approval of the committee, shall adopt the necessary rules and regulations to administer the provisions of this section.

History: 1953 Comp., § 67-41-7, enacted by Laws 1978, ch. 81, § 1; 1983, ch. 295, § 12.

Repeals and reenactments. — Laws 1978, ch. 81, § 1, repealed former 67-41-7, 1953 Comp. (former 60-14-6 NMSA 1978), as amended by Laws 1977, ch. 341, § 3, relating to bonding requirements for dealers, manufacturers and installers, and enacted a new 67-41-7, 1953 Comp. For provisions of former section, see 1978 Original Pamphlet.

ANNOTATIONS

Authority of committee. — Since the mobile home dealer and buyer had settled a dispute over return of a deposit through arbitration, the committee was estopped from ordering the dealer to return the deposit to the buyer based on the dealer's violation of a division regulation providing a time limit for return of deposits; the committee was only entitled to attach the dealer's consumer protection bond to the extent the buyer was damaged by delay in return of the deposit and require return of that amount; in addition, the committee could suspend the dealer's license for a violation of the regulation, but could not condition staying the suspension on return of the total deposit. *Rex,*

Inc. v. Manufactured Hous. Comm., 1995-NMSC-023, 119 N.M. 500, 892 P.2d 947.

Elements to be proved at proceeding to attach bond pursuant to the Manufactured Housing Act are (1) the existence of the bond; (2) losses sustained by the consumer; and (3) the losses occurring by reason of misrepresentation. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 81 P.3d 470.

Collateral estoppel applied in committee hearing on attachment of bond. — Where the purpose of a manufactured housing committee hearing was not to investigate consumers' complaints, but to determine whether the committee could attach the manufacturer's consumer protection bond and disburse it to consumers in partial payment of a judgment recovered in an Unfair Practices Act action, the committee was in privity with the consumers in the UPA action, and the doctrine of collateral estoppel applied on the issues of misrepresentation and loss by the consumers. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 81 P.3d 470.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Occupations, Trades and Professions § 7.

60-14-7. License required; classification; examination.

A. No person shall engage in business as a manufacturer, dealer, broker, repairman, installer or salesperson unless licensed as provided in the Manufactured Housing Act or the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978].

B. The committee shall adopt regulations creating a system of license classifications covering the occupations of dealer, broker, manufacturer, repairman, installer and salesperson and providing for the qualifications and examination for each class of license.

C. No person shall import for sale or exchange, or engage in the business of selling, leasing or exchanging or offering for sale, lease or exchange, any manufactured home manufactured by any person who is not licensed as a manufacturer under the Manufactured Housing Act.

History: 1953 Comp., § 67-41-8, enacted by Laws 1975, ch. 331, § 8; 1977, ch. 245, § 222; 1983, ch. 295, § 13; 2013, ch. 36, § 3.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2013 amendment, effective June 14, 2013, permitted licensees under the Construction Industries Licensing Act to engage in activities regulated by the Manufactured Housing Act; and in Subsection A, after "Manufactured Housing Act", added "or the Construction Industries Licensing Act".

ANNOTATIONS

When real estate broker must be licensed. —

When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under this article. 1982 Op. Att'y Gen. No. 82-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 1 et seq.
53 C.J.S. Licenses §§ 26, 27.

60-14-8. Licensure; exemption.

The provisions of Section 60-14-7 NMSA 1978 shall not apply to:

A. licensed real estate brokers or salesmen acting as agents for another person in the sale of real property on which is located one or more manufactured homes whose installation has been approved as provided in regulations of the committee; or

B. technicians working on weatherization projects that do not exceed a cost of three thousand five hundred dollars (\$3,500) and that are administered by a state or federal agency.

History: 1953 Comp., § 67-41-8.1, enacted by Laws 1977, ch. 6, § 1; 1983, ch. 295, § 14; 1999, ch. 90, § 1.

The 1999 amendment, effective June 18, 1999, added the Subsection A designation, added Subsection B, and made a minor stylistic change.

ANNOTATIONS

When real estate broker must be licensed. — When a real estate broker or salesperson acts as the agent for

another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under this article. 1982 Op. Att'y Gen. No. 82-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 C.J.S. Licenses §§ 35, 36.

60-14-9. License; application; issuance.

A. Application for a license required under Section 60-14-7 NMSA 1978 for one of the classified occupations, or for a certificate of qualification of a qualifying party of a licensee other than an individual licensee, shall be submitted to the division on forms prescribed and furnished by the division. The application shall contain such information and be accompanied by such attachments as are required by regulations of the division. The forms shall be accompanied by the prescribed fee.

B. No license shall be issued by the division to any person unless the division is satisfied that he is or has in his employ a qualifying party who is qualified for the classification for which the application is made and who has satisfied the requirements of Subsection C of this section.

C. An applicant for licensure shall:

- (1) demonstrate financial responsibility as required by regulations of the committee;
- (2) be of good reputation;

(3) not have engaged illegally in the licensed classification that he is applying for within one year prior to making the application;

(4) demonstrate familiarity with the rules and regulations adopted by the committee concerning the classification for which application is made;

(5) if a corporation, have complied with the laws of New Mexico regarding qualifications for doing business in this state or have been incorporated in New Mexico and have and maintain a registered agent and a registered office in this state;

(6) if an individual or partnership, have maintained a residence or street address in New Mexico for at least thirty days preceding the date of application;

(7) submit proof of registration with the revenue division of the taxation and revenue department and submit a current tax identification number; and

(8) personally or through the applicant's qualifying party successfully pass an examination administered by the division in the license classification for which application is made.

History: 1953 Comp., § 67-41-9, enacted by Laws 1975, ch. 331, § 9; 1977, ch. 245, § 223; 1983, ch. 295, § 15.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 45 to 47.
53 C.J.S. Licenses §§ 37 to 42.

60-14-10. Qualifying party; examination; certificate.

A. Except as provided in Subsection C of this section, no certificate of qualification shall be issued to any individual desiring to be a qualifying party until he has passed with a satisfactory score an examination prepared, administered and graded by the division.

B. The examination where applicable shall consist of:

(1) general business knowledge, the rules and regulations of the division and committee and the provisions of the Manufactured Housing Act [this article];

(2) technical knowledge and familiarity with the prescribed codes and minimum standards, which may be prepared and administered by an employee of the division who is expert in the particular classification for which certification is sought; and

(3) general knowledge of the statutes of this state relating to the sale, exchange or lease of manufactured homes, contracts of sale, agency and brokerage.

C. If a licensee is subject to suspension by the committee for failure of the licensee to have a qualifying party in his employ, and the employment of the qualifying party is terminated without fault of the licensee, then an employee of the licensee who is experienced in the classification for which the certificate of qualification was issued and who has been employed two or more years by the licensee shall be issued without examination a temporary certificate of qualification in the classification for which the licensee is licensed. The temporary qualifying party shall be subject to passing the examination as set forth in this section within one year from the date of the temporary certificate's issuance.

D. A certificate of qualification is not transferable.

History: 1953 Comp., § 67-41-10, enacted by Laws 1975, ch. 331, § 10; 1977, ch. 245, § 224; 1983, ch. 295, § 16.

60-14-11. Division fees.

The division shall by regulation establish reasonable annual license fees, fees for examinations and inspection and permit fees. Fees shall be set to reflect the actual cost of licensing and regulation, and in the case of the examination they shall reflect the actual cost of preparing and administering the examination. All fees shall be paid to the state treasurer for deposit and transfer as provided in Section 9-16-14 NMSA 1978.

History: 1953 Comp., § 67-41-11, enacted by Laws 1975, ch. 331, § 11; 1977, ch. 245, § 225; 1983, ch. 295, § 17; 1987, ch. 298, § 9.

Amount in controversy for purposes of jurisdiction in case involving tax or license fee, 109 A.L.R. 300.
53 C.J.S. Licenses §§ 64 to 73.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 39 to 41.

60-14-12. Suspension and revocation.

Any license or certificate of qualification issued by the division shall be suspended for a definite period or revoked under the procedures of the Uniform Licensing Act [61-1-1 NMSA 1978] by the committee for any of the following causes:

A. if a licensee or a qualifying party of a licensee violates any provision of the Manufactured Housing Act [60-14-1 NMSA 1978] or any regulations adopted by the division or committee pursuant to that act;

B. false, misleading or deceptive advertising;

C. knowingly contracting or performing a service beyond the scope of the license;

D. misrepresentation of a material fact by the applicant in obtaining a license or certificate;

E. misrepresentation or omission of a material fact in any manufactured home transaction;

F. failure to comply with the warranty requirements of the Manufactured Housing Act or any regulation of the committee pursuant to those requirements;

G. failure by a manufacturer or dealer to transfer good and sufficient title to the purchaser of a manufactured home;

H. failure by a broker or dealer to provide the buyer and the seller of a preowned manufactured home with a closing statement as required by regulation of the committee;

I. conviction of a licensee or a qualifying party of a licensee in any court of competent jurisdiction of a felony or any offense involving moral turpitude; or

J. failure by a dealer or broker in the transfer of a preowned manufactured home not owned at the time of the transaction by the dealer or broker to comply with title transfer provisions set forth by regulation of the division.

History: 1953 Comp., § 67-41-12, enacted by Laws 1975, ch. 331, § 12; 1977, ch. 245, § 226; 1983, ch. 295, § 18.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.
53 C.J.S. Licenses §§ 50 to 62.

60-14-13. Transition.

The records, automobiles, field equipment, office furniture and office equipment and the records of the mobile housing commission shall be transferred to the mobile housing division on the effective date of the Commerce and Industry Department Act. The regulations and all licenses and permits currently in force under the Construction Industries Licensing Act [60-13-1 NMSA 1978] regarding mobile homes shall remain in force to be administered by the division under the Mobile Housing Act until replaced by regulations adopted by the division.

History: 1953 Comp., § 67-41-13, enacted by Laws 1975, ch. 331, § 13; 1977, ch. 245, § 227.

Commerce and Industry Department Act. — The Commerce and Industry Department Act refers to Laws 1977, ch. 245, §§ 1 to 12, the provisions of which were compiled as 9-2-1 to 9-2-10. Laws 1983, ch. 297, § 33, repeals 9-2-1 to 9-2-13 NMSA 1978.

Mobile Housing Act. — The Mobile Housing Act refers to Laws 1975, ch. 331, the provisions of which were compiled as 60-13-2, 60-13-10, 60-13-41, 60-13-42, 60-13-44, 60-13-46, 60-14-1, 60-14-3, 60-14-7, 60-14-9 to 60-14-15 NMSA 1978. However, Laws 1983, ch. 295, § 7, amended 60-14-1 NMSA 1978 to change the name of the Mobile Housing Act to the Manufactured Housing Act. For scope of Manufactured Housing Act, see 60-14-1 NMSA 1978.

60-14-14. Hearing officer.

The division or committee may designate a hearing officer to preside over and take evidence at any hearing held pursuant to the Manufactured Housing Act [60-14-1 NMSA 1978].

History: 1953 Comp., § 67-41-14, enacted by Laws 1975, ch. 331, § 14; 1977, ch. 245, § 228; 1983, ch. 295, § 19.

60-14-15. Committee and division; consumer complaints; orders; suspension; revocation.

In addition to the other duties imposed on the committee and division under the Manufactured Housing Act [60-14-1 NMSA 1978], the committee and division shall receive complaints from any consumer who claims to be harmed by any licensee and shall attempt to have the complaints adjusted to the reasonable satisfaction of the consumer. If the committee or division cannot secure a proper adjustment, the committee or division shall prepare a formal complaint for the consumer, and, pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978], the committee shall determine whether the licensee is in violation of the Manufactured Housing Act or of rules and regulations promulgated under that act. If the licensee is in violation of the Manufactured Housing Act or of the rules and regulations promulgated under that act, the committee may order him to comply, may suspend his license until such time as the licensee complies with the order of the committee or may revoke his license.

History: 1953 Comp., § 67-41-15, enacted by Laws 1975, ch. 331, § 23; 1983, ch. 295, § 20.

60-14-16. Repealed.

Repeals. — Laws 2005, ch. 208, § 27 repealed 60-14-16 NMSA 1978, as enacted by Laws 1983, ch. 295, § 21, relating to termination of the manufactured housing

committee and division, effective June 17, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

60-14-17. Unlicensed dealers, brokers, salespersons, repairmen, manufacturers and installers; penalties.

It is unlawful for any person to act in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer within the meaning of the Manufactured Housing Act [60-14-1 NMSA 1978] without a license required by that act. Any person who conspires with any person to violate any provision of that act requiring a dealer, broker, salesperson, repairman, manufacturer or installer to obtain a license and maintain a license in good standing is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars (\$500) or ten percent of the dollar value of the contracted work performed while acting in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer without having been issued a dealer's, broker's, salesperson's, repairman's, manufacturer's or installer's license, whichever is greater.

History: 1953 Comp., § 60-14-17, enacted by Laws 1979, ch. 351, § 1; 1979, ch. 400, § 1; 1983, ch. 295, § 22.

60-14-18. Committee or division; powers of injunctions; mandamus.

The division or committee may enforce the provisions of the Manufactured Housing Act [60-14-1 NMSA 1978] by injunction, mandamus or any proper legal proceeding in the district court of the county in which the offense was committed.

History: 1953 Comp., § 60-14-18, enacted by Laws 1979, ch. 351, § 2; 1979, ch. 400, § 2; 1983, ch. 295, § 23.

60-14-19. Penalties.

A. Any person who knowingly and willfully violates a provision of the Manufactured Housing Act or any rule, regulation or administrative order of the committee or division in a manner that threatens the health or safety of any purchaser or consumer is guilty of a misdemeanor and on conviction shall be fined not more than one thousand dollars (\$1,000) or shall be confined in the county jail not longer than one year or both.

B. In any action brought to enforce any provision of the Manufactured Housing Act, the division, upon petition to the court, may recover on behalf of the state a civil penalty not to exceed one thousand dollars (\$1,000) for each violation, except that the maximum civil penalty may not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one year from the date of the first violation.

C. Failure by a manufacturer or dealer to comply with the warranty provisions of the Manufactured Housing Act or any implied warranties or the violation of any provision of the Manufactured Housing Act by any person is an unfair or deceptive trade practice in addition to those practices defined in the Unfair Practices Act [57-12-1 NMSA 1978] and is actionable pursuant to the Unfair Practices Act. As such, the venue provisions and all remedies available in the Unfair Practices Act apply to and are in addition to the remedies in the Manufactured Housing Act.

D. The director may issue a license to an applicant who at any time within one year prior to making an application has acted as an unlicensed dealer, broker, salesperson, repairman, manufacturer or installer in New Mexico without a license as required by the division if:

(1) the applicant in addition to all other requirements for licensure pays an additional fee as follows:

(a) in an amount up to ten percent of the contract price or the value of the unlicensed work in the discretion of the committee; or

(b) if the applicant has bid or offered a price on a project and was not the successful bidder or offeror, the fee shall be at least one percent but not more than five percent of the total bid amount in the discretion of the committee; and

(2) the director is satisfied that no incident of unlicensed work:

(a) caused monetary damage to any person; or

(b) resulted in an unresolved consumer complaint being filed against the applicant.

E. Any unlicensed person who has performed unlicensed work may settle the claims against that unlicensed person without becoming licensed if the administrative claims arise from that person's first offense and that person pays an administrative fee calculated pursuant to Paragraph (1) of Subsection D of this section. In addition to the administrative fee, an additional ten percent of the amount of the administrative fee shall be assessed as a service fee.

F. If the total fee to be paid by the unlicensed person pursuant to the provisions of Subsection D or E of this section is twenty-five dollars (\$25.00) or less, the fee may be waived by the director.

History: 1978 Comp., § 60-14-19, enacted by Laws 1983, ch. 295, § 24; 2007, ch. 62, § 2.

The 2007 amendment, effective June 15, 2007, added Subsections D, E and F to provide for the issuance of

licenses to applicants who have acted without a required license; settlement of claims against unlicensed persons; and for waiver of the fee to be paid by an unlicensed person if the fee is \$25.00 or less.

60-14-20. Criminal offenders character evaluation.

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Manufactured Housing Act [60-14-1 NMSA 1978].

History: Laws 1983, ch. 295, § 25.

ARTICLE 15

Crane Operators Safety

Sec.	Sec.
60-15-1. Short title.	60-15-11. Fines; denial, suspension or revocation of license; stop work orders; injunctive proceedings; violations.
60-15-2. Purpose.	60-15-12. Licensure denial, suspension or revocation; hearing; appeals.
60-15-3. Definitions.	60-15-13. Civil and administrative penalties.
60-15-4. License required; exemptions.	60-15-14. Crane operators licensure examining council; appointed.
60-15-5. Repealed.	60-15-15. Crane Operators Safety Act fund created; purpose; appropriation.
60-15-6. Administration of act.	
60-15-7. Requirements for licensure.	
60-15-8. License renewal.	
60-15-9. License fees.	
60-15-10. Repealed.	

60-15-1. Short title.

Chapter 60, Article 15 NMSA 1978 may be cited as the "Crane Operators Safety Act".

History: Laws 1993, ch. 183, § 1; 1995, ch. 188, § 1; 2017, ch. 31, § 1. **The 1995 amendment**, effective July 1, 1995, substituted "Chapter 60, Article 15 NMSA 1978" for "This act". **The 2017 amendment**, effective June 16, 2017, deleted "Hoisting" and added "Crane" prior to "Operators Safety Act".

60-15-2. Purpose.

The purpose of the Crane Operators Safety Act is to promote the general welfare and protect the lives and property of the people of New Mexico by requiring persons operating cranes to be trained and licensed when employed in construction, demolition or excavation work.

History: Laws 1993, ch. 183, § 2; 2017, ch. 31, § 2. **The 2017 amendment**, effective June 16, 2017, after "purpose of the", deleted "Hoisting" and added "Crane", and after "persons operating", deleted "hoisting equipment" and added "cranes".

60-15-3. Definitions.

As used in the Crane Operators Safety Act:

- A. "class I crane operator" means a person who is authorized to operate a crane of any size or weight;
- B. "class II crane operator" means a person who is authorized to operate:
 - (1) a hydraulic crane of up to one hundred tons lifting capacity with a maximum boom length of one hundred fifty feet, regardless of mounting or means of mobility; and
 - (2) any other type or size of crane under the direct supervision of a class I crane operator;
- C. "class III crane operator" means a person who is authorized to work as an apprentice, trainee or crane oiler or driver under the direct supervision of a class I or class II crane operator;
- D. "council" means the crane operators licensure examining council;
- E. "crane" means:
 - (1) a conventional crane;
 - (2) a tower crane;
 - (3) a hydraulic crane equipped with a winch, cable and hook with over one ton lifting capacity;
 - (4) a power-operated derrick; or
 - (5) a mobile, carrier-mounted, track or crawler type power-operated hoisting machine that is used to hoist, lower or horizontally and laterally move a suspended load by means of a winch, cable and hook but does not mean an excavator or forklift;

- F. "department" means the regulation and licensing department;
- G. "endorsement" means an authorization stamped on a class I crane operator's license indicating authorization to operate a conventional crane, a tower crane or a hydraulic crane of any size or weight;
- H. "licensee" means a person licensed under the Crane Operators Safety Act;
- I. "person" means an individual, firm, partnership, corporation, association or other organization or any combination thereof;
- J. "seat time" means the actual hands-on operation of a crane by a class II crane operator while under the direct supervision of a licensed class I crane operator or the actual hands-on operation of a crane by a class III crane operator while under the direct supervision of a licensed class I or II crane operator; and
- K. "superintendent" means the superintendent of regulation and licensing.

History: Laws 1993, ch. 183, § 3; 1995, ch. 138, § 2; 2017, ch. 31, § 3.

The 2017 amendment, effective June 16, 2017, updated definitions in the Crane Operators Safety Act; replaced "hoisting" or "hoisting equipment" with "crane" throughout the section; in Subsection E, added new Paragraph E(1) and provided paragraph designations for the different types of cranes in Subsection E, in Paragraph E(2), after "crane", deleted "used in construction, demolition or excavation work", in Paragraph E(3), after "crane", added "equipped with a winch, cable and hook with over one ton lifting capacity", and in Paragraph E(5), after "machine that", deleted "utilizes a power-operated boom capable of lateral movement by the rotation of the machine on the carrier. 'Crane' does not include a crane, except as provided in Subsection M of this section" and added "is used to hoist, lower or horizontally and laterally move a suspended load by means of a winch, cable and hook but does not mean an excavator or forklift"; deleted Subsection

H, which defined "hoisting equipment", and redesignated former Subsections I through L as Subsections H through K, respectively; in Subsection J, after "crane operator or", added "the actual hands-on operation of a crane"; in Subsection K, after "licensing", deleted "department; and"; and deleted Subsection M, which provided exemptions from the definition of "crane" or "hoisting equipment".

The 1995 amendment, effective July 1, 1995, rewrote the section.

ANNOTATIONS

Federal acts. — The federal Natural Gas Pipeline Safety Act of 1968, the federal Hazardous Liquid Pipeline Safety Act of 1979, and the federal Pipeline Safety Act, referred to in Subsection M, formerly appeared as part of 49 App. U.S.C. Following the revision of Title 49 in 1994, present comparable provisions appear as 49 U.S.C. § 60101 et seq.

60-15-4. License required; exemptions.

A. No person shall operate a crane in construction, demolition or excavation work unless the person is licensed under the Crane Operators Safety Act or exempt pursuant to Subsection D of this section.

B. Operating a crane without a license shall be considered unlicensed operation and shall subject the person who is operating the crane and the person's employer, or the employer's representative, to penalties as provided in the Crane Operators Safety Act.

C. The licensee and the licensee's employer shall be subject to applicable regulations controlling the use and operation of cranes as promulgated by the occupational safety and health administration, the mine safety and health administration or the American national standards institute.

D. The Crane Operators Safety Act shall not apply to the operation of a crane used in construction, demolition or excavation associated with:

- (1) natural gas gather lines;
- (2) interstate transmission facilities and interstate natural gas facilities subject to the federal Natural Gas Pipeline Safety Act of 1968 and its amendments;
- (3) interstate pipeline facilities and carbon dioxide pipeline facilities subject to the federal Hazardous Liquid Pipeline Safety Act of 1979;
- (4) gas and oil pipeline facilities subject to the Pipeline Safety Act [70-3-11 to 70-3-20 NMSA 1978];
- (5) mining, milling or smelting operations subject to mine safety and health administration regulations or occupational safety and health administration regulations;
- (6) prefabricated control rooms of natural gas, oil or carbon dioxide pipeline transmission facilities;
- (7) oil and gas exploration, production or drilling;
- (8) rural electric cooperative and electric, gas and water utility operations;

- (9) commercial sign operations;
- (10) the construction or operation of railroads;
- (11) the installation and maintenance of telephone or television cable; or
- (12) the installation and maintenance of propane tanks.

History: Laws 1993, ch. 183, § 4; 1995, ch. 138, § 3; 2005, ch. 52, § 1; 2013, ch. 76, § 1; 2017, ch. 31, § 4.

The 2017 amendment, effective June 16, 2017, provided certain exemptions from the Crane Operators Safety Act; in the catchline, deleted "exemption" and added "exemptions"; replaced "hoisting" or "hoisting equipment" with "crane" throughout the section; in Subsection A, after "excavation work", deleted "when the hoisting equipment is used to hoist or lower individuals or material", after "Safety Act or", deleted "the operation is", and after "pursuant to", deleted "Subsection M of Section 60-15-3 NMSA 1978" and added "Subsection D of this section"; in Subsection B, after "employer's representative", deleted "that allows a person not licensed under the Hoisting Operators Safety Act to operate hoisting equipment", after "to", deleted "the"; and after "as provided in", deleted "that act" and added "the Crane Operators Safety Act"; and added Subsection D.

The 2013 amendment, effective July 1, 2013, prohibited a person from operating hoisting equipment without a license; in the title, added "exemption"; in Subsection A,

after "Hoisting Operators Safety Act or" added "the operation"; in Subsection B, deleted the former language which permitted a person who completed in-house training to operate hoisting equipment for a period of one year without a license and added the current language of the subsection; and in Subsection C, at the beginning of the sentence, deleted "operator's" and added "licensee and the licensee's".

The 2005 amendment, effective July 1, 2006, provided that a person who completes an approved in-house training course may operate hoisting equipment for one year and that after the one year period, the person must obtain a license as provided in Section 60-17-7 NMSA 1978, with the exception that the requirement for passing a written examination is waived.

The 1995 amendment, effective July 1, 1995, in the first sentence, substituted "industry recognized" for "industrial", inserted "based on American national standards institute standards", and substituted "hoisting operators" for "hoist operators".

60-15-5. Repealed.

Repeals. — Laws 2005, ch. 52, § 5 repealed 60-15-5 NMSA 1978, as enacted by Laws 1993, ch. 183, § 5, relating to license and examination, effective July 1, 2006. For

provision of former section, see the 2005 NMSA 1978 on NMOneSource.com.

60-15-6. Administration of act.

- A. The department shall enforce and administer the provisions of the Crane Operators Safety Act.
- B. The department shall adopt rules to carry out the provisions of the Crane Operators Safety Act and to meet the occupational safety and health administration crane certification requirements.

History: Laws 1993, ch. 183, § 6; 2017, ch. 31, § 5.

The 2017 amendment, effective June 16, 2017, provided additional duties for the department in carrying out the provisions of the Crane Operators Safety Act; in Subsection A, after "provisions of the", deleted "Hoisting" and

added "Crane"; in Subsection B, after "adopt rules", deleted "and regulations necessary", after "provisions of the", deleted "Hoisting" and added "Crane", and after "Safety Act", added "and to meet the occupational safety and health administration crane certification requirements".

60-15-7. Requirements for licensure.

- A. The department shall issue a license for a class I crane operator with an endorsement to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

- (1) is at least twenty-one years of age;
- (2) has passed a written examination as prescribed by the department or has successfully completed an employer's in-house training program approved by the council;
- (3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a class I crane operator; and
- (4) within the past three years, has completed at least five hundred hours of seat time in the type of crane for which the applicant seeks a license and an endorsement and has successfully passed a practical examination administered by a council-approved examining vendor or

completed an employer's in-house training course approved by the council in the type of crane for which the applicant seeks a license and an endorsement.

B. The department shall issue a license for a class II crane operator to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

- (1) is at least eighteen years of age;
- (2) has passed a written examination prescribed by the department or has successfully completed an employer's in-house training course approved by the council;
- (3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a class II crane operator; and
- (4) within the past three years, has completed at least five hundred hours of seat time in the actual operation of hydraulic cranes with over ten tons and up to one hundred tons lifting capacity with a maximum boom length of one hundred fifty feet, regardless of mounting or means of mobility, and has successfully passed a practical examination administered by a council-approved examining vendor or has completed an employer's in-house training course approved by the council in the type of crane for which the applicant seeks a license.

C. A class II crane operator who seeks to become licensed as a class I crane operator shall keep a log book of the class II crane operator's seat time and must accumulate fifty hours of seat time under the direct supervision of a class I crane operator.

D. The department shall issue a license for a class III crane operator to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

- (1) is at least eighteen years of age;
- (2) has passed an examination prescribed by the department; and
- (3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a class III crane operator.

E. A class III crane operator who seeks to become licensed as a class I or class II crane operator shall keep a log book of the class III crane operator's seat time within the past three years and must accumulate five hundred hours of seat time under the direct supervision of a class I or class II crane operator who is properly licensed in the kind of crane being operated.

F. A class III crane operator shall not operate a crane unless under the direct supervision of a class I or class II crane operator who is properly licensed in the type of crane being operated.

G. The department shall recognize an in-house crane operator card issued to an applicant who:

- (1) is at least eighteen years of age;
- (2) is participating in an in-house training course approved by the council; and
- (3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a crane operator.

H. A person with an in-house crane operator card shall only operate a crane for the employer who provided the approved in-house training course. The employer of a person with an in-house crane operator card shall provide that operator with supervision and additional training by a class I or class II crane operator who is properly licensed in the type of crane being operated to ensure compliance and safe operation of the crane pursuant to the Crane Operators Safety Act.

I. An in-house crane operator card shall be valid for two years and is not subject to extension or renewal.

History: Laws 1993, ch. 183, § 7; 1995, ch. 138, § 5; 2013, ch. 76, § 2; 2017, ch. 31, § 6.

The 2017 amendment, effective June 16, 2017, replaced "hoisting" or "hoisting equipment" with "crane" throughout the section; in Subsection A, after "crane operator with", deleted "a conventional crane, hydraulic crane or tower crane" and added "an"; and in Subsection C, after "must accumulate", deleted "five hundred" and added "fifty".

The 2013 amendment, effective July 1, 2013, provided the requirements for Class I, II, and III hoisting operator licenses; in Subsection A, after "Class I hoisting operator", added "with a conventional crane, hydraulic crane or tower crane endorsement"; in Paragraph (2), after "prescribed by the department", added the remainder of the sentence; deleted former Paragraph (4), which permitted the issuance of a license to a person who had three years'

experience operating a conventional crane, hydraulic crane or tower crane, and added Paragraph (4); in Subsection B, in Paragraph (2), after "prescribed by the department", added the remainder of the sentence and in Paragraph (4), at the beginning of the sentence, added "within the past three years", after "three years, has", deleted "had at least two years' experience" and added "completed at least five hundred hours of seat time", and after "means of mobility", deleted "or otherwise demonstrates his operating experience and competency by examination prescribed

by the department" and added the remainder of the sentence; in Subsection E, after "log book of", deleted "his" and added "the class III hoisting operator's", after "operator's seat time", added "within the past three years", after "five hundred hours of seat time", deleted "or six thousand hours of experience", and after "class II hoisting operator", added the remainder of the sentence; and added Subsections F through I.

The 1995 amendment, effective July 1, 1995, rewrote this section.

60-15-8. License renewal.

A. A license issued pursuant to Section 60-15-7 NMSA 1978 shall be valid for two years from the date of issuance.

B. License renewal procedures shall be prescribed by the department by rule.

C. Any license not renewed by the expiration date shall be considered expired, and the licensee shall not operate a crane within the state until the license is renewed. Operating a crane with an expired license shall be considered unlicensed operation and shall subject the person who is operating the crane to the penalties as provided in the Crane Operators Safety Act.

D. The department shall adopt and promulgate rules for renewal of an expired license and may require the licensee to reapply as a new applicant.

History: Laws 1993, ch. 183, § 8; 1995, ch. 138, § 6; 2013, ch. 76, § 3; 2017, ch. 31, § 7.

The 2017 amendment, effective June 16, 2017, replaced "hoisting" or "hoisting equipment" with "crane" throughout the section.

The 2013 amendment, effective July 1, 2013, provided for renewal of licenses; prohibits a licensee whose license has expired from operating hoisting equipment until the license is renewed; provided for penalties for violations of this section; in Subsection B, after "department by", deleted "regulation" and added "rule"; deleted former

Subsection C, which provided a misdemeanor penalty for operating hoisting equipment after the expiration of a license; and added Subsections C and D.

The 1995 amendment, effective July 1, 1995, substituted "Section 60-15-7 NMSA 1978" for "Section 7 of the Hoisting Operators Safety Act" in Subsection A; in Subsection C, substituted "class I" for "first class", substituted "class II" for "second class", substituted "class III" for "third class", and substituted "less than one hundred dollars (\$100) or more than three hundred dollars (\$300)" for "more than five hundred dollars (\$500)".

60-15-9. License fees.

Applicants for licensure shall pay a fee set by the department not to exceed:

A. seventy-five dollars (\$75.00) for an initial license or a renewal; and

B. five dollars (\$5.00) per month in late fees for failure to renew a license within the allocated time period.

History: Laws 1993, ch. 183, § 9.

60-15-10. Repealed.

Repeals. — Laws 1995, ch. 138, § 10, repeals 60-15-10 NMSA 1978, as enacted by Laws 1993, Chapter 183, Section 10, creating the Hoisting Operators Fund, effective

July 1, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

60-15-11. Fines; denial, suspension or revocation of license; stop work orders; injunctive proceedings; violations.

A. Notwithstanding any other provision of the Crane Operators Safety Act, the department upon reasonable cause that a violation of the provisions of the Crane Operators Safety Act or a rule adopted pursuant to that act has occurred that creates a health or safety risk for the community, which requires immediate action, may issue a stop work order. At any time after service of the order to stop work, the person may request a prompt hearing to determine whether a violation occurred. If a person fails to comply with a stop work order within twenty-four hours, the

department may bring a suit for a temporary restraining order and for injunctive relief to prevent further violations.

B. Whenever the department possesses evidence that indicates a person has engaged in or intends to engage in an act or practice constituting a violation of the Crane Operators Safety Act or a rule adopted pursuant to that act, the department may seek temporarily or permanently to restrain or to enjoin the act or practice. The department shall not be required to post a bond when seeking a temporary or permanent injunction.

C. Unless otherwise provided in the Crane Operators Safety Act, it is a violation of that act for a person to:

- (1) operate, or employ a person to operate, a crane in construction, demolition or excavation work without a valid license issued pursuant to the Crane Operators Safety Act;
- (2) refuse to comply with a stop work order issued by the department;
- (3) refuse or fail to comply with the provisions of the Crane Operators Safety Act or a rule adopted pursuant to that act;
- (4) make a material misstatement in an application for licensure;
- (5) intentionally make a material misstatement to the department during an official investigation;
- (6) aid or abet another in violating provisions of the Crane Operators Safety Act or a rule adopted pursuant to that act;
- (7) alter or falsify a license issued by the department; or
- (8) fail to furnish to the department, its investigators or its representatives information requested by the department in the course of an official investigation.

D. The department may deny, suspend or revoke a license for a violation of the rules adopted by the department pursuant to the Crane Operators Safety Act or for a violation of the provisions of that act.

E. Disciplinary proceedings may be instituted by sworn complaint by any person, including department staff or a member of the council, and shall conform with the provisions of the Uniform Licensing Act.

F. The department may issue a citation and fine to an individual or business for violation of the provisions of the Crane Operators Safety Act. The amount of such fines and terms of such orders shall be established by the department by rule subject to the limitations of Section 60-15-13 NMSA 1978.

History: Laws 1993, ch. 183, § 11; 1995, ch. 138, § 7; 2013, ch. 76, § 4; 2017, ch. 31, § 8.

The 2017 amendment, effective June 16, 2017, replaced "hoisting" or "hoisting equipment" with "crane" throughout the section.

The 2013 amendment, effective July 1, 2013, provided for stop work orders, injunctive proceedings, and disciplinary action; in the title, deleted "reprimand", after "fines", added "denial", and after "license", added "injunctive proceedings; violations"; deleted the former language of the section, which provided for reprimands, fines, suspension

and revocation of a license for negligent or reckless operation of hoisting equipment; and added Subsections A through F.

The 1995 amendment, effective July 1, 1995, added "Reprimand; fines; suspension or" in the Section heading, inserted "reprimand or fine a licensee or suspend or" and substituted "violation of the rules and regulations adopted by the department or for any violation of the provisions of the Hoisting Operators Safety Act" for "that causes damage to property or injury to an individual".

60-15-12. Licensure denial, suspension or revocation; hearing; appeals.

The superintendent shall, before denying a license to an applicant, or revoking or suspending a license for a violation of any provision of the Crane Operators Safety Act, provide for a hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

History: Laws 1993, ch. 183, § 12; 2005, ch. 52, § 2; 2017, ch. 31, § 9.

The 2017 amendment, effective June 16, 2017, deleted "Hoisting" and added "Crane" prior to "Operators Safety Act".

The 2005 amendment, effective July 1, 2006, required that before the superintendent can deny a license or revoke or suspend a license, the superintendent must provide the applicant or licensee a hearing pursuant to the Uniform Licensing Act [61-1-1 NMSA 1978].

60-15-13. Civil and administrative penalties.

A. A person who engages in unlicensed operation may be assessed an administrative penalty not to exceed one thousand dollars (\$1,000).

B. An employer, firm, partnership, corporation, association or other organization that knowingly violates the provisions of the Crane Operators Safety Act may be assessed an administrative penalty not to exceed five thousand dollars (\$5,000).

C. Any licensed crane operator who violates a provision of the Crane Operators Safety Act may be assessed an administrative penalty not to exceed five thousand dollars (\$5,000).

D. The department may bring an action in a court of competent jurisdiction to enforce the provisions of or to enjoin a person from violating the provisions of the Crane Operators Safety Act. If the court finds that a violation has occurred, the person who committed the violation shall be liable for the expenses incurred by the department in investigating and enforcing the provisions of that act plus reasonable attorney fees and costs associated with court action.

History: Laws 1993, ch. 183, § 13; 1995, ch. 138, § 8; 2013, ch. 76, § 5; 2017, ch. 31, § 10.

The 2017 amendment, effective June 16, 2017, replaced "hoisting" with "crane" throughout the section.

The 2013 amendment, effective July 1, 2013, provided for administrative, rather than civil and criminal, penalties; in the title, deleted, "Violations; criminal"; in Subsection A, between "A person who" and "engages in unlicensed", deleted language which provided that the operation of a crane without a license was a misdemeanor, and added the remainder of the sentence; in Subsection B, between "An employer" and "firm, partnership", deleted language which provided that knowingly allows an unlicensed person to operate hoisting equipment was a misdemeanor; and added the remainder of the sentence;

in Subsection C, after "may be assessed", deleted "a civil" and added "an administrative" and after "penalty not to exceed", deleted "one thousand dollars (\$1,000) for each day during any portion of which a violation occurs" and added "five thousand dollars (\$5,000)", and deleted former Subsection E, which provided for administrative penalties not to exceed one thousand dollars.

The 1995 amendment, effective July 1, 1995, substituted "a hoisting operator's" for "the appropriate" and substituted "less than one hundred dollars (\$100) or more than three hundred dollars (\$300)" for "more than five hundred dollars (\$500)" in Subsection A, substituted "An employer or his representative" for "A person" and made a minor stylistic change in Subsection B, and added Subsections C through E.

60-15-14. Crane operators licensure examining council; appointed.

A. The "crane operators licensure examining council" is created. The members of the council shall serve at the pleasure of the superintendent. The superintendent shall appoint at least five members to the council with consideration given to geographical representation and proportional representation of operator, contractor, labor and public members. The members of the council shall include at least:

- (1) one class I crane operator;
- (2) one contractor, as defined by Section 60-13-3 NMSA 1978, who employs at least one crane operator;
- (3) one representative of organized labor; and
- (4) two members from the public at large who are not licensed crane operators.

B. The duties of the council include:

- (1) reviewing and approving the applications, qualifications and examinations of applicants for licensure as crane operators and recommending to the superintendent whether licensure should be granted based on their evaluation of the operating experience and competence of the applicants;
- (2) reporting findings and recommendations from the hearings to the superintendent;
- (3) proceeding according to regulations adopted by the department; and
- (4) approving examinations and training programs that meet the requirements of the federal occupational safety and health administration, United States department of labor or occupational health and safety bureau of the department of environment.

History: Laws 1993, ch. 183, § 14; 1995, ch. 138, § 9; 2005, ch. 52, § 3; 2013, ch. 76, § 6; 2017, ch. 31, § 11.

The 2017 amendment, effective June 16, 2017, replaced "hoisting" with "crane" throughout the section.

The 2013 amendment, effective July 1, 2013, clarified the structure of the licensure examining council; deleted the introductory paragraph, which provided the structure of the licensure examining council; added Subsection A;

and in Subsection B, added the introductory sentence and Paragraph (4).

The 2005 amendment, effective July 1, 2006, increased the number of members to the hoisting operators licensure examining council to five members; required that the superintendent give consideration to geographical representation in the appointment of members to the council; and required that one member be a representative

of organized labor and that two members be public members who are not licensed hoisting operators.

The 1995 amendment, effective July 1, 1995, in the third sentence in the introductory paragraph substituted "class I" for "first class" and added "who employs one or more hoisting operators", and inserted "and approving" in Subsection A.

60-15-15. Crane Operators Safety Act fund created; purpose; appropriation.

A. The "Crane Operators Safety Act fund" is created in the state treasury. The fund shall consist of legislative appropriations to the fund; fees charged by the department pursuant to the Crane Operators Safety Act; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

B. The fund shall be administered by the department, and money in the fund is appropriated to the department for the purpose of carrying out the provisions of the Crane Operators Safety Act. Expenditures from the fund shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the superintendent or the superintendent's authorized representative.

History: Laws 2005, ch. 52, § 4; 2017, ch. 31, § 12.

The 2017 amendment, effective June 16, 2017, replaced "hoisting" with "crane" throughout the section.

ARTICLE 16

Pecan Buyers Licensure

Sec.

60-16-1. Short title.

60-16-2. Definitions.

60-16-3. New Mexico department of agriculture; peace officer; powers and duties; rulemaking.

60-16-4. Buyer's license requirement; application.

Sec.

60-16-5. Duties of buyer; record of purchase.

60-16-6. Exemptions.

60-16-7. Violations; revocation of license; penalty.

60-16-8. Disposition of fees.

60-16-1. Short title.

This act [60-16-1 through 60-16-8 NMSA 1978] may be cited as the "Pecan Buyers Licensure Act".

History: Laws 2018, ch. 47, § 1.

Effective dates. — Laws 2018, ch. 47, § 9 made Laws 2018, ch. 47, § 1 effective July 1, 2018.

60-16-2. Definitions.

As used in the Pecan Buyers Licensure Act:

A. "buyer" means a person engaged in the business of purchasing in-shell pecans from a pecan producer and includes an accumulator, buying station, cleaning plant, sheller, dealer or broker;

B. "buying location" means a physical location where a buyer accepts in-shell pecans or a physical location where records relating to the purchase of in-shell pecans are maintained in the event the purchase of in-shell pecans is brokered;

C. "department" means the New Mexico department of agriculture, its staff or authorized agents;

D. "director" means the director of the New Mexico department of agriculture;

E. "in-shell pecan" means a pecan nut with its shell attached;

F. "license" means an in-shell pecan buyer's license issued by the department pursuant to the Pecan Buyers Licensure Act;

G. "peace officer" means a full-time salaried and commissioned or certified law enforcement officer of a police or sheriff's department that is part of or administered by the state or a political subdivision of the state;

H. "pecan producer" means a person who grows pecans; and

I. "personal identification document" means:

(1) a driver's license;

(2) a military identification card; or

(3) a passport issued by the United States or by another country and recognized by the United States.

History: Laws 2018, ch. 47, § 2.

Effective dates. — Laws 2018, ch. 47, § 9 made Laws 2018, ch. 47, § 2 effective July 1, 2018.

60-16-3. New Mexico department of agriculture; peace officer; powers and duties; rulemaking.

A. The department shall:

(1) establish an in-shell pecan licensing and inspection program directed at buyers of in-shell pecans;

(2) adopt rules to carry out the provisions of the Pecan Buyers Licensure Act; and

(3) collect a reasonable annual licensure fee, established in rule, but not to exceed five hundred dollars (\$500).

B. The department or a peace officer may inspect buying locations and documents related to the buying and selling of in-shell pecans to determine compliance with the Pecan Buyers Licensure Act or adopted rules.

History: Laws 2018, ch. 47, § 3.

Effective dates. — Laws 2018, ch. 47, § 9 made Laws 2018, ch. 47, § 3 effective July 1, 2018.

60-16-4. Buyer's license requirement; application.

A. A license is required for:

(1) the purchase of in-shell pecans by a buyer; and

(2) each buying location used by a buyer.

B. On an annual basis, a buyer shall submit an application to the department for a license. The information required on the application shall be established by department rule.

C. A license shall be valid for a period of twelve months, beginning and ending on a date specified by the department.

History: Laws 2018, ch. 47, § 4.

Effective dates. — Laws 2018, ch. 47, § 9 made Laws 2018, ch. 47, § 4 effective July 1, 2018.

60-16-5. Duties of buyer; record of purchase.

A. A buyer shall:

(1) not purchase in-shell pecans without a valid license;

(2) comply with the provisions of the Pecan Buyers Licensure Act and adopted rules;

(3) comply with state and federal requirements related to the movement of in-shell pecans;

(4) ensure that all of the buyer's employees involved in the purchasing, receiving or shipping of in-shell pecans are trained on the provisions of the Pecan Buyers Licensure Act and adopted rules;

(5) maintain accurate and legible written records, in a form approved by the department, of the purchase of in-shell pecans that are made in the course of the buyer's business;

(6) ensure that records of the purchase of in-shell pecans are available for inspection by the department or a peace officer within forty-eight hours of the transaction; and

- (7) retain records of the purchase of in-shell pecans for a minimum of two years.
- B. A purchase record shall include the:
- (1) location and date of the purchase;
 - (2) name and address of the seller;
 - (3) street address or physical location of the tree or the farm from where the in-shell pecans originated;
 - (4) identification number contained on the personal identification document of the seller;
 - (5) license plate number, make and model of the seller's motor vehicle; and
 - (6) total weight of the in-shell pecans purchased.
- C. If a licensed buyer purchases in-shell pecans from another licensed buyer, the purchase record shall include the seller's name, address and telephone number, the date of origin of the in-shell pecans and the total weight of the in-shell pecans purchased.

History: Laws 2018, ch. 47, § 5.

Effective dates. — Laws 2018, ch. 47, § 9 made Laws 2018, ch. 47, § 5 effective July 1, 2018.

60-16-6. Exemptions.

- A. The Pecan Buyers Licensure Act does not apply to:
- (1) a person whose business is a grocery store, retail store, gas station or other similar operation and that conducts in-shell pecan transactions totaling less than one hundred pounds during any twelve-month period;
 - (2) transactions involving in-shell pecans for personal consumption totaling less than fifty pounds during any twelve-month period; and
 - (3) brokers or other individuals, as approved by the department, that are engaged in in-shell pecan transactions, but that do not physically receive pecan shipments within the state.
- B. Additional exemptions to the licensing requirements of the Pecan Buyers Licensure Act may be granted by the director.

History: Laws 2018, ch. 47, § 6.

Effective dates. — Laws 2018, ch. 47, § 9 made Laws 2018, ch. 47, § 6 effective July 1, 2018.

60-16-7. Violations; revocation of license; penalty.

- A. The department may revoke a license for violations of the Pecan Buyers Licensure Act or the rules or orders promulgated pursuant to that act. The department may deny a subsequent license to a person found to be in violation of the Pecan Buyers Licensure Act.
- B. A person who violates the provisions of the Pecan Buyers Licensure Act, or a rule or order promulgated under that act, after a notice to cease and desist, is guilty of a penalty assessment misdemeanor, and the penalty assessment is two hundred fifty dollars (\$250).
- C. Each day a person remains in violation of the Pecan Buyers Licensure Act constitutes a separate offense.

History: Laws 2018, ch. 47, § 7.

Effective dates. — Laws 2018, ch. 47, § 9 made Laws 2018, ch. 47, § 7 effective July 1, 2018.

60-16-8. Disposition of fees.

All fees collected pursuant to the Pecan Buyers Licensure Act shall be paid into the treasury of New Mexico state university and credited to the department for administration and enforcement of the Pecan Buyers Licensure Act.

History: Laws 2018, ch. 47, § 8.

Effective dates. — Laws 2018, ch. 47, § 9 made Laws 2018, ch. 47, § 8 effective July 1, 2018.

CHAPTER 61

Professional and Occupational Licenses

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61-1-1. Short title.

Chapter 61, Article 1 NMSA 1978 may be cited as the "Uniform Licensing Act".

History: 1953 Comp., § 67-26-1, enacted by Laws 1957, ch. 247, § 1; 1971, ch. 54, § 1; 2021 (1st S.S.), ch. 3, § 7.

Compiler's notes. — Laws 2002, ch. 83, §§ 2 to 4 purported to enact new sections under the Uniform Licensing Act, but those sections were relocated to appear following the State Civil Emergency Preparedness Act, which is compiled as 12-10-1 to 12-10-10 NMSA 1978.

Cross references. — For State Rules Act, see 14-4-1 NMSA 1978 et seq.

For criminal offender employment, see 28-2-1 NMSA 1978.

For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2021 (1st S.S.) amendment, effective June 29, 2021, changed "Sections 67-26-1 through 67-26-31 NMSA 1953" to "Chapter 61, Article 1 NMSA 1978".

ANNOTATIONS

Due process. — A regulation of the New Mexico board of psychologist examiners requiring an oral examination for reinstatement of a retiree's license was rationally related to a legitimate governmental purpose; however, the examination might not comply with due process, and, thus, an applicant for reinstatement was entitled to a hearing on the rational justification for the oral examination requirement. *Mills v. N.M. State Bd. of Psychologist Exam'rs*, 1997-NMSC-028, 123 N.M. 421, 941 P.2d 502.

Appeals. — Because the Uniform Licensing Act did not provide a retired psychologist with a basis for appealing a decision of the New Mexico board of psychologist examiners to require an oral examination for reinstatement of her license, she could request a writ of certiorari to obtain review of the board's alleged due process violations. *Mills v. N.M. State Bd. of Psychologist Exam'rs*, 1997-NMSC-028, 123 N.M. 421, 941 P.2d 502.

Revocation must be based on substantial evidence. — In administrative adjudications where a person's livelihood (a property right) is at stake, any action depriving a person of that property must be based upon such substantial evidence as would support a verdict in a court of law. *Young v. Board of Pharmacy*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

Naked hearsay insufficient. — In proceedings to revoke a license to conduct a business or profession, where, by law, the licensee is entitled to a hearing before the licensing authority, revocation based solely upon hearsay evidence is unwarranted. *Young v. Board of Pharmacy*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

License not revocable on grounds for original denial. — An administrative agency, having once issued a license to an applicant who has made full disclosure of all pertinent facts, may not revoke that same license for reasons that would not have permitted issuance of the license in the first instance. *Roberts v. State Bd. of Embalmers & Funeral Dirs.*, 1967-NMSC-257, 78 N.M. 536, 434 P.2d 61.

Barring fraud and misrepresentation and the existence of statutory authority, state may not revoke the license issued previously to party for the reason that party did not have two years of college training required by the statute when, in fact, at the time appellant granted the license to party, state knew that appellee did not have said college work but, nevertheless, proceeded to grant the license under a policy which, in effect, eliminated the college requirement. *Roberts v. State Bd. of Embalmers & Funeral Dirs.*, 1967-NMSC-257, 78 N.M. 536, 434 P.2d 61.

Specification of "unprofessional conduct" not required. — A board may suspend or revoke a license to practice a profession for "unprofessional conduct" without its being required to first specify by regulation or rule exactly what acts may be so considered. *Young v. Board of Pharmacy*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

Preexisting account not required to receive funds. — No law or regulation of the New Mexico real estate commission requires a custodial, trust or escrow account prior to the receipt of funds appropriate for deposit in such account. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

Law reviews. — For note, "Police Power and the Design of Buildings," see 5 Nat. Res. J. 122 (1965).

For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Res. J. 114 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 1 to 10.

Single or isolated transactions, as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Physician's or other healer's conduct, or conviction of offense, not directly related to medical practice, as ground for disciplinary action, 34 A.L.R.4th 609.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 A.L.R.4th 248.

Failure of building and construction artisan or contractor to procure business or occupational license as affecting enforceability of contract or right to recover for work done - modern cases, 44 A.L.R.4th 271.

Validity of state or municipal tax or license fee upon occupation of practicing law, 50 A.L.R.4th 467.

61-1-2. Definitions.

As used in the Uniform Licensing Act:

A. "board" means:

- (1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;
 - (2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;
 - (3) the crane operators licensure examining council;
 - (4) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978; and
 - (5) any other state agency to which the Uniform Licensing Act is applied by law;
- B. "applicant" means a person who has applied for a license;
- C. "expedited license", whether by examination, endorsement, credential or reciprocity, means a license issued to a person in this state based on licensure in another state or territory of the United States, the District of Columbia or a foreign country, as applicable;
- D. "initial license" means the first regular license received from a board for a person who has not been previously licensed;
- E. "license" means a certificate, permit or other authorization to engage in a profession or occupation regulated by a board;
- F. "licensing jurisdiction" means another state or territory of the United States, the District of Columbia or a foreign country, as applicable;
- G. "regular license" means a license that is not issued as a temporary or provisional license;
- H. "revoke a license" means to prohibit the conduct authorized by the license; and
- I. "suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license. "Suspend a license" also means to allow, for a stated period of time, the conduct authorized by the license, subject to conditions that are reasonably related to the grounds for suspension.

History: 1953 Comp., § 67-26-2, enacted by Laws 1957, ch. 247, § 2; 1959, ch. 223, § 13; 1969, ch. 6, § 1; 1971, ch. 54, § 2; 1973, ch. 259, § 4; 1977, ch. 245, § 165; 1981, ch. 62, § 16; 1981, ch. 349, § 1; 1983, ch. 295, § 26; 1989, ch. 6, § 49; 1989, ch. 51, § 26; 1989, ch. 387, § 16; 1990, ch. 75, § 24; 1991, ch. 147, § 26; 1993, ch. 49, § 31; 1993, ch. 171, § 25; 1993, ch. 295, § 1; 2002, ch. 83, § 1; 2022, ch. 39, § 1.

The 2022 amendment, effective May 18, 2022, included "the crane operators licensure examining council" within the definition of "board", revised the definition of "license", removed the definition of "emergency", and defined "expedited license", "initial license", "licensing jurisdiction" and "regular license", as used in the Uniform Licensing Act; in Subsection A, added a new Paragraph A(3) and redesignated former Paragraphs A(3) and A(4) as Paragraphs A(4) and A(5), respectively; added new Subsections C and D and redesignated former Subsection C as Subsection E; in Subsection E, after "to engage in", deleted "each of the professions and occupations" and added "a profession or occupation", and after "regulated by", deleted "the boards enumerated in Subsection A of this section" and added "a board"; added new Subsections F and G and redesignated former Subsections D and E as Subsections H and I, respectively; and deleted former Subsection F, which defined "emergency".

The 2002 amendment, effective March 5, 2002, added Subsection F.

The 1993 amendment, effective June 18, 1993, re-wrote Subsection A.

The 1991 amendment, effective June 14, 1991, in Subsection A, added Paragraphs (35) and (36), designated former Paragraph (35) as Paragraph (37) and made a related stylistic change, and made a minor stylistic change in Subsection E.

The 1990 amendment, effective May 16, 1990, in Subsection A, substituted "professional engineers and surveyors" for "professional engineers and land surveyors" in Paragraph (16), substituted "construction industries commission and construction industries division" for "construction industries committee and division" in Paragraph (20), deleted "Polygraphy Act and the" preceding "Private Investigators Act" in Paragraph (25), added present Paragraphs (28) to (34), designated former Paragraph (28) as present Paragraph (35), and made a minor stylistic change.

The 1989 amendment, effective July 1, 1989, in Subsection A(20), substituted "regulation and licensing department" for "commerce and industry department"; in Subsection A(24), inserted "manufactured housing" preceding "division" and substituted "regulation and licensing department" for "commerce and industry department"; added Subsection A(27); and redesignated former Subsection A(27) as Subsection A(28).

61-1-3. Opportunity for licensee or applicant to have hearing.

Every licensee or applicant shall be afforded notice and an opportunity to be heard before the board has authority to take any action that would result in:

- A. denial of permission to take an examination for licensing for which application has been properly made as required by board rule;

- B. denial of a license after examination for any cause other than failure to pass an examination;
- C. denial of a license for which application has been properly made as required by board rule on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification;
- D. withholding the renewal of a license for any cause other than:
 - (1) failure to pay any required renewal fee;
 - (2) failure to meet continuing education requirements; or
 - (3) issuance of a temporary license extension if authorized by statute;
- E. suspension of a license;
- F. revocation of a license;
- G. restrictions or limitations on the scope of a practice;
- H. the requirement that the applicant complete a program of remedial education or treatment;
- I. monitoring of the practice by a supervisor approved by the board;
- J. the censure or reprimand of the licensee or applicant;
- K. compliance with conditions of probation or suspension for a specific period of time;
- L. payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;
- M. corrective action, as specified by the board; or
- N. a refund to the consumer of fees that were billed to and collected from the consumer by the licensee.

History: 1953 Comp., § 67-26-3, enacted by Laws 1957, ch. 247, § 3; 1981, ch. 349, § 2; 1993, ch. 295, § 2; 2020, ch. 6, § 3.

The 2020 amendment, effective July 1, 2020, in the introductory paragraph, after "take any action", deleted "which" and added "that".

The 1993 amendment, effective June 18, 1993, added the Paragraph (1) designation and Paragraphs (2) and (3) to Subsection D; added Subsections G through N; and made stylistic changes throughout the section.

ANNOTATIONS

Sufficiency of notice and hearing determined under due process standards. — Because there is no precise statutory guideline for a proceeding under this section and due process requires adequate notice and a hearing before the state can take action seeking remuneration against a licensee, the sufficiency of the notice and hearing must be determined under a constitutional due process analysis. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

A constitutional due process analysis under this section must consider and balance three factors: (1) the private interest affected, (2) the risk of an erroneous deprivation of the interest with the procedures used, and (3) the government's interest, including the fiscal and administrative burdens of providing additional procedures. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

Due process requirements were satisfied where the notice of contemplated action cited the statute and the rules the committee relied upon in contemplating the attachment of the consumer bond, contained information about the actual bond, and outlined the general nature of the evidence, and where the licensee had a full and fair opportunity to be heard on the issue of whether collateral estoppel applied on the issues of misrepresentation and loss by the consumers. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

Probable cause hearing not necessary before revocation proceedings. — A licensee is not deprived of any due process rights when no probable cause hearing is conducted prior to the institution of license revocation proceedings. *Keney v. Derbyshire*, 718 F.2d 352 (10th Cir. 1983).

Charging board not disqualified in hearing on charge. — The board of medical examiners has exclusive jurisdiction of the granting and revoking of certificates admitting physicians and surgeons to practice and, in view of the absence of a provision for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and was, therefore, an interested party. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Zeal in performing public duty does not disqualify. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Authority of pharmacy board. — Subsection L grants the board of pharmacy authority to fine pharmacist licensees up to \$1,000.00 for any violation of the Pharmacy Act, Section 61-11-1 NMSA 1978 et seq., or for a violation of provisions of the board's rules and regulations for which the Pharmacy Act authorizes disciplinary action. Additionally, Subsection L grants the board authority to impose fines of the same amounts upon non-pharmacist registrants and licensees over whom the board has the power to impose other forms of discipline including license or registration revocation and suspension. As to persons over whom the board lacks such disciplinary powers under the Pharmacy Act, the Uniform Licensing Act does not grant the power to impose fines. 1995 Op. Att'y Gen. No. 95-01.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 16, 57, 139.

Validity of statute or ordinance vesting discretion as to license in public officials without prescribing a rule of action, 12 A.L.R. 1435, 54 A.L.R. 1104, 92 A.L.R. 400.

Suspicion of intended violation of its conditions as ground for refusal of license, 27 A.L.R. 325.

Personal liability of public officers for refusing to grant license, 85 A.L.R. 298.

License holder's right to question propriety of issuing license to other persons, 109 A.L.R. 1259.

What amounts to conviction or satisfies requirement as to showing of conviction, within statute making conviction a ground for refusing to grant or for cancelling license or special privilege, 113 A.L.R. 1179.

Prohibition as means of controlling licensing official, 115 A.L.R. 15, 159 A.L.R. 627.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Change in law pending application for permit or license, 169 A.L.R. 584.

Construction of "grandfather clause" of statute or ordinance regulating or licensing business or occupation, 4 A.L.R.2d 667.

Right of person wrongfully refused license upon proper application therefor to do act for which license is required, 30 A.L.R.2d 1006.

Right to attack validity of statute, ordinance or regulation relating to occupational or professional license as affected by applying for, or securing, license, 65 A.L.R.2d 660.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses §§ 43, 55.

61-1-3.1. Limitations.

A. An action that would have any of the effects specified in Subsections D through N of Section 61-1-3 NMSA 1978 or an action related to unlicensed activity shall not be initiated by a board later than two years after the discovery by the board of the conduct that would be the basis for the action, except as provided in Subsection C of this section.

B. The time limitation contained in Subsection A of this section shall be tolled by any civil or criminal litigation in which the licensee or applicant is a party arising from substantially the same facts, conduct or transactions that would be the basis for the board's action.

C. The New Mexico state board of psychologist examiners shall not initiate an action that would result in any of the actions specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than five years after the conduct of the psychologist or psychologist associate that is the basis for the action. However, if the conduct that is the basis for the action involves a minor or a person adjudicated incompetent, the action shall be initiated, in the case of a minor, no later than one year after the minor's eighteenth birthday or five years after the conduct, whichever is last and, in the case of a person adjudicated incompetent, one year after the adjudication of incompetence is terminated or five years after the conduct, whichever is last.

D. The New Mexico public accountancy board shall not initiate an action under the 1999 Public Accountancy Act [Chapter 61, Article 28B NMSA 1978] that would result in any of the actions specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than two years following the discovery by the board of a violation of that act.

History: 1978 Comp., § 61-1-3.1, enacted by Laws 1981, ch. 349, § 3; 1989, ch. 41, § 1; 1992, ch. 10, § 27; 1993, ch. 218, § 40; 1993, ch. 295, § 4; 2003, ch. 334, § 1.

The 2003 amendment, effective July 1, 2003, in Subsection A, inserted "or an action related to unlicensed activity", "by the board" and substituted "Subsection C" for "Subsections C and D"; in Subsection D, inserted "1999" preceding "Public Accountancy Act".

The 1993 amendment, effective June 18, 1993, substituted "Subsections D through N" for "Subsection D, E or F" in Subsection A and the first sentence of Subsection C; inserted "the discovery of" in Subsection A; substituted "result in any of the actions" for "have any of the effects" in the first sentence of Subsection C; and rewrote Subsection D. This section was also amended by Laws 1993, ch. 218, § 40. The section is set out as amended by Laws 1993, ch. 295, § 4. See 12-1-8 NMSA 1978.

The 1992 amendment, effective May 20, 1992, substituted "Subsections C and D" for "Subsection C" in Subsection A, added Subsection D and made minor stylistic changes throughout the section.

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "Subsection D" for "Subsections D" and added "except as provided in Subsection C of this section"; in Subsection B deleted ", transaction" following "conduct"; and added Subsection C.

ANNOTATIONS

When limitation period began to run under the 1993 version of the statute. — The 1993 version of the two-year limitations began to run when the licensing

board discovered the conduct giving rise to a disciplinary action against a licensee, not when someone else, such as a complaining party, discovered the conduct. *N.M. Real Estate Comm'n v. Barger*, 2012-NMCA-081, 284 P.3d 1112.

Where a complaint was filed with the New Mexico real estate commission in October 2008 against the licensed real estate broker which alleged that the broker was guilty of ethical violations in connection with a real estate contract executed by a seller of real estate and the broker as buyer; the commission investigated the matter and, in May 2010, filed a notice of contemplated action against the broker threatening to revoke the broker's license; the notice of contemplated action was filed more than two years after the complaining party discovered the broker's alleged unethical conduct, but less than two years after the commission discovered the conduct; the 1993 version of the statute did not specify whose discovery of unethical conduct triggered the limitations period; and the 2003 amendment specified that discovery of the unethical conduct by the commission triggered the limitations period, the limitations period began to run under the 1993 version of the statute when the commission discovered the broker's conduct, not when the complaining party discovered the conduct. *N.M. Real Estate Comm'n v. Barger*, 2012-NMCA-081, 284 P.3d 1112.

When limitation period begins to run. — The limitation period of this section begins to run from the date of the licensee's culpable conduct. *Varoz v. N.M. Bd. of Podiatry*, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

Criminal prosecution tolls statute. — The criminal prosecution of culpable conduct serves only to toll the

statute if litigation is commenced during the two-year period following the criminal act. *Varoz v. N.M. Bd. of Podiatry*, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

If tolling applies, the limitation period is tolled from the time of indictment or information until the judgment of conviction has been entered, but no longer. *Varoz v. N.M. Bd. of Podiatry*, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

Conviction is not "conduct". — Although the fact of conviction may provide a separate and independent basis for revoking a professional license, a conviction is not "conduct" within the meaning of this section and, therefore, the two-year limitation period begins to run from the time of the conduct, transaction or occurrence that underlies the conviction rather than from the date of conviction.

Varoz v. N.M. Bd. of Podiatry, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

Evidence outside of limitations period proper. — Where psychologist failed to object at the administrative hearing to evidence concerning events that occurred outside of the statute of limitations; as such, the evidence of the therapeutic relationship was properly presented in order to provide context and background. *N.M. State Bd. of Psychologist Exam'rs v. Land*, 2003-NMCA-034, 133 N.M. 362, 62 P.3d 1244, cert. denied, 133 N.M. 413, 63 P.3d 516.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine, 51 A.L.R.4th 1147.

61-1-3.2. Unlicensed activity; disciplinary proceedings; civil penalty.

A. A person who is not licensed to engage in a profession or occupation regulated by a board is subject to disciplinary proceedings by the board.

B. A board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in a profession or occupation regulated by the board. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing.

History: Laws 2003, ch. 334, § 3.

Effective dates. — Laws 2003, ch. 334, § 4 made Laws 2003, ch. 334, § 3 effective July 1, 2003.

61-1-3.3. Conversion therapy; grounds for disciplinary action.

A. A person licensed pursuant to provisions of Chapter 61 NMSA 1978 shall not provide conversion therapy to any person under eighteen years of age. The provision of conversion therapy in violation of the provisions of this subsection shall be grounds for disciplinary action by a board in accordance with the provisions of the Uniform Licensing Act.

B. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth; and

(3) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

History: Laws 2017, ch. 132, § 1.

Effective dates. — Laws 2017, ch. 132 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

61-1-3.4. Fingerprints not required for license renewal.

When a professional or occupational board requires submission of fingerprints as part of the initial license application, and a licensee has provided fingerprints and the license has been issued, the board shall not require a licensee to submit fingerprints again to renew the license, but a licensee shall submit to a background investigation if required.

History: Laws 2019, ch. 209, § 4.

Effective dates. — Laws 2019, ch. 209, § 9 made Laws 2019, ch. 209, § 4 effective July 1, 2020.

61-1-3.5. Incomplete application; notice; expiration.

If a board deems an application for licensure incomplete, the board shall notify the applicant within thirty days, including the ways in which the application is incomplete. An incomplete application expires after one year.

History: Laws 2022, ch. 39, § 3.

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

61-1-4. Notice of contemplated board action; request for hearing; notice of hearing.

A. When investigating complaints against licensees, a board may issue investigative subpoenas prior to the issuance of a notice of contemplated action as provided in this section.

B. When a board contemplates taking an action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, it shall serve upon the applicant a written notice containing a statement:

(1) that the applicant has failed to satisfy the board of the applicant's qualifications to be examined or to be issued a license, as the case may be;

(2) indicating in what respects the applicant has failed to satisfy the board;

(3) that the applicant may secure a hearing before the board by depositing in the mail within twenty days after service of the notice a certified return receipt requested letter addressed to the board and containing a request for a hearing; and

(4) calling the applicant's attention to the applicant's rights under Section 61-1-8 NMSA 1978.

C. In a board proceeding to take an action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, the burden of satisfying the board of the applicant's qualifications shall be upon the applicant.

D. When a board contemplates taking an action of a type specified in Subsections D through N of Section 61-1-3 NMSA 1978, it shall serve upon the licensee a written notice containing a statement:

(1) that the board has sufficient evidence that, if not rebutted or explained, will justify the board in taking the contemplated action;

(2) indicating the general nature of the evidence;

(3) that unless the licensee within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the board and containing a request for a hearing, the board shall take the contemplated action; and

(4) calling the licensee's attention to the licensee's rights as provided in Section 61-1-8 NMSA 1978.

E. Except as provided in Section 61-1-15 NMSA 1978, if the licensee or applicant does not mail a request for a hearing within the time and in the manner required by this section, the board may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

F. If the licensee or applicant does mail a request for a hearing as required by this section, the board shall, within twenty days of receipt of the request, notify the licensee or applicant of the time and place of hearing, the name of the person who shall conduct the hearing for the board and the statutes and rules authorizing the board to take the contemplated action. The hearing shall be held not more than sixty nor less than fifteen days from the date of service of the notice of hearing.

G. Licensees shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees or if they prevail at the hearing and an action specified in Section 61-1-3 NMSA 1978 is not taken by the board.

H. All fines collected by a board shall be deposited to the credit of the current school fund as provided in Article 12, Section 4 of the constitution of New Mexico.

History: 1953 Comp., § 67-26-4, enacted by Laws 1957, ch. 247, § 4; 1993, ch. 295, § 3; 2003, ch. 334, § 2; 2022, ch. 39, § 4.

The 2022 amendment, effective May 18, 2022, clarified that a licensee or applicant that has received notice of contemplated action and fails to request a hearing as required may apply to the board to reopen proceedings under certain circumstances, and provided that all fines collected by the board shall be deposited in the current school fund; in Subsection E, added "Except as provided in Section 61-1-15 NMSA 1978"; and added Subsection H.

The 2003 amendment, effective July 1, 2003, in Paragraph D(4), substituted "as provided in" for "under"; in Subsection F, added "of hearing" at the end.

The 1993 amendment, effective June 18, 1993, added present Subsection A; redesignated the former first paragraph of Subsection A as present Subsection B; rewrote the former second paragraph of Subsection A as present Subsection C; redesignated former Subsections B through D as Subsections D through F; substituted "D through N" for "D, E or F" in the introductory language of Subsection D; added Subsection G; and made stylistic changes in Subsections B, D and F.

ANNOTATIONS

Guide to assessment of costs. — Rule 1-054 NMRA and Section 61-32-24(F) NMSA 1978 provide guidance to the board when considering a cost assessment, but neither provision is an exhaustive list of the types of costs that are assessable to a disciplined licensee and any costs that are not included in either provision are to be reviewed to determine whether the board acted fraudulently, arbitrarily or capriciously; whether assessment of the cost is supported by substantial evidence; and whether the board acted in accordance with law. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 949.

Assessable costs. — Transcription costs, and if the board is the prevailing party, the costs of at least one expert witness, are assessable to a disciplined licensee. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 949.

Non-assessable costs. — The hearing officer's costs, the cost of a hearing room and board member's per diem and mileage costs are not assessable to a disciplined licensee. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 949.

Probable cause hearing not necessary before revocation proceedings. — A licensee is not deprived of any due process rights when no probable cause hearing is conducted prior to the institution of license revocation proceedings. *Keney v. Derbyshire*, 718 F.2d 352 (10th Cir. 1983).

Charging board not disqualified in hearing on charge. — The board of medical examiners has exclusive jurisdiction regarding the granting and revoking of certificates, admitting physicians and surgeons to practice and, in view of the fact that the statutes do not provide for disqualification of board members, proceedings before

the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and was, therefore, an interested party. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Zeal in performing public duty does not disqualify. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Content of notice. — The "evidence" to be set out in the notice of contemplated action under this statute is the evidence of the ground or grounds to be relied upon in taking the contemplated action under former Section 61-5-14 NMSA 1978, not the evidence to be adduced by way of explanation and determination of rehabilitation under the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978 et seq. *Weiss v. N.M. Bd. of Dentistry*, 1990-NMSC-077, 110 N.M. 574, 798 P.2d 175.

Notice of contemplated action sufficient. — The notice of contemplated action in this case was sufficient to provide the licensee with notice, even though it did not state that the qualifying party certificate was in jeopardy; the licensee knew the general nature of the proceedings against him and that is all that notice pleading requires. Further, the licensee waived the lack of notice issue by appearing at the administrative hearing and defending on the merits. *Oden v. State Regulation & Licensing Dep't*, 1996-NMSC-022, 121 N.M. 670, 916 P.2d 1337.

Psychologist was afforded adequate notice that she might be questioned regarding what means she had used to assess her former patient's needs and potential for exploitation; the relevant board rules, which were quoted in the notice of contemplated action, provided that personal relationships with former clients could only be entered with "caution and deliberateness", which should be reflected by the psychologist considering issues such as the need for future treatment and the potential for exploitation of the client. *N.M. State Bd. of Psychologist Exam'rs v. Land*, 2003-NMCA-034, 62 N.M. 1244, 62 P.3d 1244; cert. denied, 133 N.M. 413, 63 P.3d 516.

The notice of contemplated action was adequate where it cited the statute and the rules the committee relied upon in contemplating the attachment of the consumer bond, contained information about the actual bond, and outlined the general nature of the evidence. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

The manufacturer was not prejudiced by the omission of the right to subpoena witnesses in the notice of contemplated action because the hearing was based upon the judgment and findings of the district court in an Unfair Practices Act action, and the manufacturer did not have the right to relitigate them. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

Rule 1-054 NMRA does not govern the award of costs in an administrative disciplinary action under the Uniform Licensing Act. *N.M. Bd. of Veterinary Med. v. Riegger*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'd in part, rev'd in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

Assessment of cost of stenographic record to licensee in disciplinary hearing was not arbitrary or capricious because employing a stenographer, rather than tape recording the proceedings, was a permissible and logical choice. *N.M. Bd. of Veterinary Med. v. Riegger*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'd in part, rev'd in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

Assessment of board members' per diem and mileage costs to licensee in disciplinary hearing was proper. *N.M. Bd. of Veterinary Med. v. Riegger*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'd in part, rev'd in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

Requirement of actual notice to licensee. — The Uniform Licensing Act requires actual notice to be given

to an individual who may lose a license, pursuant to the hearing requirements contained in the law. In that case, a public policy-making body which convenes a hearing on a licensing matter and which is subject to the provisions of the act must follow the act's specific notice tenets. In these cases, mere posting of such notice is insufficient as it affects the individual licensee. 1990 Op. Att'y Gen. No. 90-29.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 60.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

53 C.J.S. Licenses §§ 43, 55, 56.

61-1-5. Method of service.

Any notice required to be served by Section 61-1-4 or 61-1-21 NMSA 1978 and any decision required to be served by Section 61-1-14 or 61-1-21 NMSA 1978, may be served either personally or by certified mail, return receipt requested, directed to the licensee or applicant at his last known [known] address as shown by the records of the board. If the notice or decision is served personally, service shall be made in the same manner as is provided for service by the Rules of Civil Procedure for the District Courts. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision.

History: 1953 Comp., § 67-26-5, enacted by Laws 1957, ch. 247, § 5; 1981, ch. 349, § 5.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For service of process, *see* Rule 1-004 NMRA.

ANNOTATIONS

Requirement of actual notice to licensee. — The Uniform Licensing Act requires actual notice to be given

to an individual who may lose a license, pursuant to the hearing requirements contained in the law. In that case, a public policy-making body which convenes a hearing on a licensing matter and which is subject to the provisions of the act must follow the act's specific notice tenets. In these cases, mere posting of such notice is insufficient as it affects the individual licensee. 1990 Op. Att'y Gen. No. 90-29.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.

53 C.J.S. Licenses §§ 37, 54.

61-1-6. Venue of hearing.

Board hearings held under the Uniform Licensing Act shall be conducted in the county in which the person whose license is involved maintains his residence, or at the election of the board, in any county in which the act or acts complained of occurred; except that, in cases involving initial licensing, hearings shall be held in the county where the board maintains its office. In any case, however, the person whose license is involved and the board may agree that the hearing is to be held in some other county.

History: 1953 Comp., § 67-26-6, enacted by Laws 1957, ch. 247, § 6.

61-1-7. Hearing officers; hearings; public; exception; excusal; protection of witness and information.

A. All hearings under the Uniform Licensing Act shall be conducted either by the board or, at the election of the board, by a hearing officer who may be a member or employee of the board or any other person designated by the board in its discretion. A hearing officer shall, within thirty days after any hearing, submit to the board a report setting forth his findings of fact.

B. All hearings under the Uniform Licensing Act shall be open to the public, provided that in cases in which any constitutional right of privacy of an applicant or licensee may be irreparably

damaged, a board or hearing officer may hold a closed hearing if the board or hearing officer so desires and states the reasons for this decision in the record. The applicant or licensee may, for good cause shown, request a board or hearing officer to hold either a public or a closed hearing.

C. Each party may peremptorily excuse one board member or a hearing officer by filing with the board a notice of peremptory excusal at least twenty days prior to the date of the hearing, but this privilege of peremptory excusal may not be exercised in any case in which its exercise would result in less than a quorum of the board being able to hear or decide the matter. Any party may request that the board excuse a board member or a hearing officer for good cause by filing with the board a motion of excusal for cause at least twenty days prior to the date of the hearing. In any case in which a combination of peremptory excusals and excusals for good cause would result in less than a quorum of the board being able to hear or decide the matter, the peremptory excusals that would result in removing the member or members of the board necessary for a quorum shall not be effective.

D. In any case in which excusals for cause result in less than a quorum of the board being able to hear or decide the matter, the governor shall, upon request by the board, appoint as many temporary board members as are necessary for a quorum to hear or decide the matter. These temporary members shall have all of the qualifications required for permanent members of the board.

E. In any case in which excusals result in less than a quorum of the board being able to hear or decide the matter, the board, including any board members who have been excused, may designate a hearing officer to conduct the entire hearing.

F. Each board shall have power where a proceeding has been dismissed, either on the merits or otherwise, to relieve the applicant or licensee from any possible odium that may attach by reason of the proceeding, by such public exoneration as it shall see fit to make, if requested by the applicant or licensee to do so.

G. There shall be no liability on the part of and no action for damages against a person who provides information to a board in good faith and without malice in the reasonable belief that such information is accurate. A licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to a board shall be subject to disciplinary action.

History: 1953 Comp., § 67-26-7, enacted by Laws 1957, ch. 247, § 7; 1981, ch. 349, § 6; 1993, ch. 295, § 5.

The 1993 amendment, effective June 18, 1993, substituted "excusal; protection of witness and information" for "disqualification" in the catchline; substituted "any constitutional right of privacy" for "the reputation" in the first sentence of Subsection B; rewrote Subsection C; substituted "excusals for cause" for "disqualifications" in the first sentence of Subsection D; substituted "excusals" for "disqualifications" and "excused" for "disqualified" in Subsection E; and added Subsection G.

ANNOTATIONS

Charging board not disqualified in licensing on charge. — The board of medical examiners has exclusive jurisdiction regarding the granting and revoking of certificates admitting physicians and surgeons to practice and, in view of the fact that the statutes do not provide for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and is

therefore an interested party. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Zeal in performing public duty does not disqualify. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Due process violated where hearing conducted by prejudiced tribunal. — Any utilization of this section which has the effect of allowing an administrative hearing, punitive in nature, to be conducted by a patently prejudiced tribunal must necessarily violate the due process provisions of the fifth and fourteenth amendments of the United States constitution and N.M. Const., art. II, § 18. *Reid v. N.M. Bd. of Exam'rs in Optometry*, 1979-NMSC-005, 92 N.M. 414, 589 P.2d 198.

One peremptory disqualification allowed. — Interpretation of this section by the manufactured homes committee to allow only one peremptory disqualification of a committee member at a hearing was correct. *Rex, Inc. v. Manufactured Hous. Comm.*, 1995-NMSC-023, 119 N.M. 500, 892 P.2d 947.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.
53 C.J.S. Licenses §§ 43, 54, 55, 59.

61-1-8. Rights of person entitled to hearing.

A. A person entitled to be heard under the Uniform Licensing Act shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the

hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to:

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

History: 1953 Comp., § 67-26-8, enacted by Laws 1957, ch. 247, § 8; 1981, ch. 349, § 7.

ANNOTATIONS

Section provides right to examine all opposing witnesses. *McCaughy v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Res. J. 114 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.
53 C.J.S. Licenses §§ 43, 54, 58, 59.

61-1-9. Powers of board or hearing officer in connection with hearings.

A. In connection with any hearing held under the Uniform Licensing Act, the board or hearing officer shall have power to have counsel to develop the case; to subpoena, for purposes of discovery and of the hearing, witnesses and relevant books, papers, documents and other evidence; to administer oaths or affirmations to witnesses called to testify; to take testimony; to examine witnesses; and to direct a continuance of any case. Boards or hearing officers may also hold conferences before or during the hearing for the settlement or simplification of the issues but such settlement or simplification shall only be with the consent of the applicant or licensee.

B. Geographical limits upon the subpoena power shall be the same as if the board or hearing officer were a district court sitting at the location at which the hearing or discovery proceeding is to take place. The method of service, including tendering of witness and mileage fees, shall be the same as that under the Rules of Civil Procedure for the District Courts, except that those rules requiring the tender of fees in advance shall not apply to the state.

C. The board or hearing officer may impose any appropriate evidentiary sanction against a party who fails to provide discovery or to comply with a subpoena.

History: 1953 Comp., § 67-26-9, enacted by Laws 1957, ch. 247, § 9; 1981, ch. 349, § 8.

ANNOTATIONS

Administrative body has only the authority given it by law. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Granting continuance to allow discovery. — This section allows the board to grant a prehearing

continuance to assure that the licensee obtains full and complete discovery. *Molina v. McQuinn*, 1988-NMSC-060, 107 N.M. 384, 758 P.2d 798.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Res. J. 114 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 51.
53 C.J.S. Licenses §§ 43, 58, 59.

61-1-10. Enforcement of board orders and contempt procedure.

In proceedings before a board or hearing officer under the Uniform Licensing Act, if any person refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of a board contained in its decision rendered after hearing, the secretary of the board may apply to the district court of the county

where the proceedings are being held for an order directing that person to take the requisite action. The court may issue such order in its discretion. Should any person willfully fail to comply with an order so issued, the court shall punish him as for contempt.

History: 1953 Comp., § 67-26-10, enacted by Laws 1957, ch. 247, § 10; 1981, ch. 349, § 9.

61-1-11. Rules of evidence.

A. In proceedings held under the Uniform Licensing Act, boards and hearing officers may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. Boards and hearing officers may in their discretion exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. In proceedings involving the suspension or revocation of a license, rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state. Documentary evidence may be received in the form of copies or excerpts.

B. Boards and hearing officers may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within their specialized knowledge. When any board or hearing officer takes notice of a fact, the applicant or licensee shall be notified either before or during the hearing of the fact so noticed and its source and shall be afforded an opportunity to contest the fact so noticed.

C. Boards and hearing officers may utilize their experience, technical competence and specialized knowledge in the evaluation of evidence presented to them.

History: 1953 Comp., § 67-26-11, enacted by Laws 1957, ch. 247, § 11; 1981, ch. 349, § 10.

ANNOTATIONS

Reliable evidence given probative effect. — Evidence of a kind commonly relied on by reasonably prudent men in the conduct of serious affairs may be given probative effect under this section. *Young v. Board of Pharmacy*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

Necessity of expert testimony. — Expert testimony is not required to establish negligence or a failure to comply with the standards of professional conduct. A board is required to rely on substantial evidence in reaching its decision; while the court will defer to the board's expert interpretation of evidence, the court will not allow the board to take disciplinary action without substantial evidence in the record to justify the application of the board's expertise. *Gonzales v. N.M. Bd. of Chiropractic Exam'rs*, 1998-NMSC-021, 125 N.M. 418, 962 P.2d 1253.

Expert testimony was not required to support charges that a dentist submitted a false claim for reimbursement and that the dentist was guilty of unprofessional conduct and failed to practice dentistry in a professionally competent manner. Where the agency conducting the hearing is itself composed of experts qualified to make a judgment as to the licensee's adherence to standards of professional conduct, there is no need for the kind of assistance an expert provides in the form of an opinion. *Weiss v. N.M. Bd. of Dentistry*, 1990-NMSC-077, 110 N.M. 574, 798 P.2d 175.

Hearsay admissible. — This section clearly contemplates that a board may admit and consider hearsay evidence, if it is of a kind commonly relied upon by reasonably prudent men in the conduct of serious affairs. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Reference to indictment. — Because an agency has wide discretion in receiving and excluding evidence in proceedings under the Uniform Licensing Act, any error in allowing reference to an indictment against a dentist was harmless. *Weiss v. N.M. Bd. of Dentistry*, 1990-NMSC-077, 110 N.M. 574, 798 P.2d 175.

Standard of proof applied in administrative proceedings, with few exceptions, is a preponderance of the evidence. *Foster v. Bd. of Dentistry*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

Substantial evidence must support revocation. — The revocation or suspension of a license to conduct a business or profession must not be based solely upon hearsay evidence, as other legally competent evidence, together with the hearsay evidence, must substantially support the findings upon which the revocation or suspension is based. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Higher burden to prove fraud. — If fraud is charged in an administrative proceeding, the evidence in support of a finding of fraud is not deemed substantial "if it is not clear, strong and convincing." *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Special weight given to technical findings. — Courts may properly give special weight and credence to findings concerning technical or scientific matters by administrative bodies whose members, by education, training or experience, are especially qualified and are functioning within the perimeters of their expertise since legislative approval of the treatment of the findings of these boards is implicit in this section. *McDaniel v. N.M. Bd. of Med. Exam'rs*, 1974-NMSC-062, 86 N.M. 447, 525 P.2d 374.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Res. J. 114 (1968).

For article, "The Use of the Substantial Evidence Rule to Review Administrative Findings of Fact in New Mexico," see 10 N.M.L. Rev. 103 (1979-80).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 62, 71, 79, 80, 83.

Hearsay in proceedings for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

Hearsay evidence in proceedings before state administrative agencies, 36 A.L.R.3d 12.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

53 C.J.S. Licenses §§ 43, 58, 59.

61-1-12. Record.

In all hearings conducted under the Uniform Licensing Act, a complete record shall be made of all evidence received during the course of the hearing. The record shall be preserved by any stenographic method in use in the district courts of this state, or in the discretion of the board, by tape recording. The board shall observe any standards pertaining to tape recordings established for the district courts of this state.

History: 1953 Comp., § 67-26-12, enacted by Laws 1957, ch. 247, § 12; 1981, ch. 349, § 11.

ANNOTATIONS

Section provides for complete transcript. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

61-1-13. Decision.

A. After a hearing has been completed, the members of the board shall proceed to consider the case and as soon as practicable shall render their decision, provided that the decision shall be rendered by a quorum of the board. In cases in which the hearing is conducted by a hearing officer, all members who were not present throughout the hearing shall familiarize themselves with the record, including the hearing officer's report, before participating in the decision. In cases in which the hearing is conducted by the board, all members who were not present throughout the hearing shall thoroughly familiarize themselves with the entire record, including all evidence taken at the hearing, before participating in the decision.

B. A decision based on the hearing shall be made by a quorum of the board and signed by the person designated by the board within sixty days after the completion of the preparation of the record or submission of a hearing officer's report, whichever is later. In any case, the decision must be rendered and signed within ninety days after the hearing.

History: 1953 Comp., § 67-26-13, enacted by Laws 1957, ch. 247, § 13; 1981, ch. 349, § 12; 1993, ch. 295, § 6.

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "a quorum of the board" for "the board at a meeting where a majority of the members are present and participating in the decision" at the end of the first sentence; and made stylistic changes in the second and third sentences.

ANNOTATIONS

Standard of proof for a hearing under this section is by a preponderance of the evidence. *Foster v. Board of Dentistry*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

Section requires that decision be made by majority of the members of the board. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

The board is not required to give deference to a hearing officer's report. — Where the hearing officer was appointed to take evidence on a complaint that the dentist engaged in unprofessional conduct, the hearing officer found that the dentist had not engaged in unprofessional conduct and recommended that no disciplinary action be taken; the board reviewed the hearing officer's report and the evidence, and concluded that the dentist had engaged in unprofessional conduct; and the Uniform Licensing Act only permits the hearing officer to make findings, but not to make conclusions of law or recommendations regarding disciplinary action and requires the board to use its knowledge and expertise to make its own findings and conclusions, and to determine what disciplinary action is appropriate, the district court erred by concluding that the board acted arbitrarily and capriciously when it failed to defer to the hearing officer's report. *N.M.*

Bd. of Dental Health Care v. Jaime, 2013-NMCA-040, 296 P.3d 1261.

Effect of failure to timely sign decision. — Failure of the board of dentistry to render and sign its decision suspending a dentist's license within 90 days after completion of the hearing made the decision null and void. *Foster v. Board of Dentistry*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

The 90-day time limit imposed by this section is expressly jurisdictional. Where the board fails to take action within the required 90-day period, its decision is void and must be reversed. *Lopez v. N.M. Bd. of Med. Exam'rs*, 1988-NMSC-039, 107 N.M. 145, 754 P.2d 522.

Authority of secretary of public education to revoke teachers' licenses. — Article XII, Section 6 of the New Mexico Constitution, the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978, the Public Education Department Act, Chapter 9, Article 24 NMSA 1978, the Public School Code, Chapter 22 NMSA 1978, and the School Personnel Act, Chapter 22, Article 10A NMSA 1978, do not preclude the secretary of public education from having exclusive authority to make the final decision to revoke a teacher's license. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

Uniform Licensing Act is not a tax statute, and does not carry with it the presumption of correctness and burden of persuasion that favors the state in tax matters. *Kmart Props., Inc. v. N.M. Taxation & Revenue Dep't*, 2006-NMCA-026, 139 N.M. 177, 131 P.3d 27, *aff'd*, 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 C.J.S. Licenses §§ 43, 60.

61-1-14. Service of decision.

Within fifteen days after the decision is rendered and signed, the board shall serve upon the applicant or licensee a copy of the written decision.

History: 1953 Comp., § 67-26-14, enacted by Laws 1957, ch. 247, § 14; 1981, ch. 349, § 13.

61-1-15. Procedure where person fails to request or appear for hearing.

If a person who has requested a hearing does not appear, and no continuance has been granted, the board or hearing officer may hear the evidence of such witnesses as may have appeared, and the board may proceed to consider the matter and dispose of it on the basis of the evidence before it in the manner required by Section 61-1-13 NMSA 1978. Where because of accident, sickness or other cause a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time apply to the board to reopen the proceeding, and the board upon finding such cause sufficient shall immediately fix a time and place for hearing and give the person notice as required by Sections 61-1-4 and 61-1-5 NMSA 1978. At the time and place fixed, a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing.

History: 1953 Comp., § 67-26-15, enacted by Laws 1957, ch. 247, § 15; 1981, ch. 349, § 14.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.
53 C.J.S. Licenses §§ 43, 61.

61-1-16. Contents of decision.

The decision of the board shall contain findings of fact made by the board; conclusions of law reached by the board; the order of the board based upon these findings of fact and conclusions of law; and a statement informing the applicant or licensee of his right to judicial review and the time within which such review must be sought.

History: 1953 Comp., § 67-26-16, enacted by Laws 1957, ch. 247, § 16; 1981, ch. 349, § 15.

61-1-17. Petition for review.

A person entitled to a hearing provided for in the Uniform Licensing Act, who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 67-26-17, enacted by Laws 1957, ch. 247, § 17; 1993, ch. 295, § 7; 1998, ch. 55, § 73; 1999, ch. 265, § 78.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

The 1993 amendment, effective June 18, 1993, inserted "office of the attorney general and on the" in the second sentence and made stylistic changes in the second and fourth sentences.

ANNOTATIONS

Section applies only to licensing decisions. — This section sets forth venue provisions governing the judicial review only of orders of the board which relate to the denial, suspension or revocation of licenses. It is inapplicable to judicial review of price agreement order of state board of barber examiners. *Tudesque v. N.M. State Bd. of Barber Exam'rs*, 1958-NMSC-128, 65 N.M. 42, 331 P.2d 1104.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 51.

Stay pending review of judgment or order revoking or suspending a professional, trade or occupational license, 166 A.L.R. 575.

53 C.J.S. Licenses §§ 43, 62.

61-1-18. Repealed.

Repeals. — Laws 1998, ch. 55, § 94 repealed 61-1-18 NMSA 1978, as enacted by Laws 1957, ch. 247, § 18, relating to records filed by the board and contents of the

records, effective September 1, 1998. For provisions of former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

61-1-19. Stay.

At any time before or during the review proceeding pursuant to Section 61-1-17 NMSA 1978, the aggrieved person may apply to the board or file a motion in accordance with the Rules of Civil Procedure for the District Courts in the reviewing court for an order staying the operation of the board decision pending the outcome of the review. The board or court may grant or deny the stay in its discretion. No order granting or denying a stay shall be reviewable.

History: 1953 Comp., § 67-26-19, enacted by Laws 1957, ch. 247, § 19; 1976, ch. 4, § 1; 1981, ch. 349, § 16; 1998, ch. 55, § 74.

Cross references. — For appeal of final decisions by agencies to district court, see 39-3-1.1 NMSA 1978.

For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

The 1998 amendment, effective September 1, 1998, inserted "pursuant to Section 61-1-17 NMSA 1978" and deleted "such" following "No".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 84.

Validity and construction of state statutory provision forbidding court to stay, pending review, judgment or order revoking or suspending professional, trade or occupational license, 42 A.L.R.4th 516.

61-1-20. Repealed.

Repeals. — Laws 1998, ch. 55, § 94 repealed 61-1-20 NMSA 1978, as enacted by Laws 1957, ch. 247, § 20, relating to scope of review, effective September 1, 1998. For

provisions of former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

61-1-21. Power of board to reopen the case.

A. At any time after the hearing and prior to the filing of a petition for review, the person aggrieved may request the board to reopen the case to receive additional evidence or for other cause.

B. The board need not reconvene and may be polled about whether to grant or refuse a request to reopen the case. The board shall grant or refuse the request in writing, and that decision and the request shall be made a part of the record. The decision to grant or refuse a request to reopen the case shall be made, signed by the person designated by the board, and served upon the applicant or licensee within fifteen days after the board receives the request.

C. The granting or refusing of a request to reopen the case shall be within the board's discretion. The board may reopen the case on its own motion at any time before petition for review is filed; thereafter, it may do so only with the permission of the reviewing court. If the board reopens the case, it shall provide notice and a hearing to the applicant or licensee. The notice of the hearing shall be served upon the applicant or licensee within fifteen days after service of the decision to reopen the case. The hearing shall be held within forty-five days after service of the notice, and a decision shall be rendered, signed and served upon the applicant or licensee within thirty days after the hearing.

D. The board's decision to refuse a request to reopen the case shall not be reviewable except for an abuse of discretion.

History: 1953 Comp., § 67-26-21, enacted by Laws 1957, ch. 247, § 21; 1981, ch. 349, § 17.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 51.
53 C.J.S. Licenses §§ 43, 61.

61-1-22, 61-1-23. Repealed.

Repeals. — Laws 1998, ch. 55, § 94 repealed 61-1-22 and 61-1-23 NMSA 1978, as enacted by Laws 1957, ch. 247, §§ 22 and 23, relating to remand for hearing newly discovered evidence; procedure before the board; appeal

to supreme court, effective September 1, 1998. For provisions of former sections, see the 1997 NMSA 1978 on *NMOneSource.com*.

61-1-24. Power of board to seek injunctive relief.

Any board may appear in its own name in the courts of the state and may apply to courts having jurisdiction for injunctions to prevent violations of statutes administered by the board and of rules and regulations issued pursuant to those statutes, and such courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations.

History: 1953 Comp., § 67-26-24, enacted by Laws 1957, ch. 247, § 24.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 85, 149.
53 C.J.S. Licenses § 85.

ANNOTATIONS

Law reviews. — For note, "Police Power and the Design of Buildings," see 5 Nat. Res. J. 122 (1965).

61-1-25. Declaratory judgment.

The validity of any rule adopted by a board may be determined upon petition for a declaratory judgment thereon addressed to the district court of Santa Fe county when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The court shall declare the rule invalid if it finds that the rule violates or conflicts with constitutional or statutory provisions or exceeds the statutory authority of the board.

History: 1953 Comp., § 67-26-25, enacted by Laws 1957, ch. 247, § 25.

Cross references. — For declaratory judgments, see 44-6-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 22A Am. Jur. 2d Declaratory Judgments §§ 73, 76.
53 C.J.S. Licenses § 37.

ANNOTATIONS

Law reviews. — For note, "Police Power and the Design of Buildings," see 5 Nat. Res. J. 122 (1965).

61-1-26. Repealed.

Repeals. — Laws 1998, ch. 55, § 94 repealed 61-1-26 NMSA 1978, as enacted by Laws 1957, ch. 247, § 26, providing a uniform method of judicial review of board

actions of the kind, effective September 1, 1998. For provisions of former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

61-1-27. Repealed.

Repeals. — Laws 2022, ch. 39, § 106 repealed 61-1-27 NMSA 1978, as enacted by Laws 1957, ch. 247, § 27, relating to amending and repealing, effective May 18, 2022.

For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-1-28. Purpose of act; liberal interpretation.

The legislature expressly declares that its purpose in enacting the Uniform Licensing Act is to promote uniformity with respect to the conduct of board hearings and judicial review and that the Uniform Licensing Act is to be liberally construed to carry out its purpose.

History: 1953 Comp., § 67-26-28, enacted by Laws 1957, ch. 247, § 28.

Severability. — Laws 1957, ch. 247, § 29 provided for the severability of the act if any part or application thereof is held invalid.

61-1-29. Adoption of rules; notice and hearing.

Rulemaking procedures of a board shall be as provided in the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1953 Comp., § 67-26-29, enacted by Laws 1971, ch. 54, § 3; 1981, ch. 349, § 19; 2022, ch. 39, § 5.

Cross references. — For legal newspaper, see 14-11-2 NMSA 1978.

The 2022 amendment, effective May 18, 2022, eliminated the rulemaking requirements in the Uniform Licensing Act and required all boards subject to the Uniform Licensing Act to be subject to the State Rules Act for all rulemaking, removed the requirement for publication of the notice of rulemaking, and eliminated the "thirty day after filing" effective date for final rules; in the section heading, deleted "regulations" and added "rules"; added "Rulemaking" preceding, "procedures" and added "shall be as provided in the State Rules Act", and deleted the remainder of former Subsection A; and deleted former Subsection B through E.

ANNOTATIONS

Notice procedure of pharmacy board does not violate due process. *Montoya v. O'Toole*, 1980-NMSC-045, 94 N.M. 303, 610 P.2d 190.

Board must disclose reasoning behind regulation. — In propounding regulations the board of pharmacy need not make formal findings. The only requirements which it must meet are that the public and the reviewing courts are informed as to the reasoning behind the regulation. The comments of one board member suffice in this regard. *Pharmaceutical Mfrs. Ass'n v. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

Subsection C is applicable to repeal of regulations by an administrative agency. *Rivas v. Board of Cosmetologists*, 1984-NMSC-076, 101 N.M. 592, 686 P.2d 934.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 46, 125.

53 C.J.S. Licenses § 37.

61-1-30. Repealed.

Repeals. — Laws 2022, ch. 39, § 106 repealed 61-1-30 NMSA 1978, as enacted by Laws 1971, ch. 54, § 4, relating to emergency regulations, appeal, effective May 18, 2022.

For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-1-31. Validity of rule; judicial review.

A. A person who is or may be affected by a rule promulgated by a board may appeal to the court of appeals for relief. All appeals shall be upon the record made at the hearing by the board and shall be taken to the court of appeals within thirty days after filing of the rule pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. An appeal to the court of appeals under this section is perfected by the timely filing of a notice of appeal with the court of appeals, with a copy attached of the rule from which the appeal is taken. The appellant shall certify in the appellant's notice of appeal that arrangements have been made with the board for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support the appellant's appeal to the court, at the expense of the appellant, including three copies that the appellant shall furnish to the board.

C. Upon appeal, the court of appeals shall set aside the rule only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) contrary to law; or
- (3) against the clear weight of substantial evidence of the record.

History: 1953 Comp., § 67-26-31, enacted by Laws 1971, ch. 54, § 5; 1981, ch. 349, § 21; 2022, ch. 39, § 6.

The 2022 amendment, effective May 18, 2022, clarified the procedure for appeal by a person affected by a final rule promulgated by a board; in the section heading, after "validity of", deleted "regulation" and added "rule"; and replaced "regulation" with "rule" throughout the section.

ANNOTATIONS

Interpretations overturned only if clearly wrong. — Reviewing courts overturn the administrative interpretation of a statute by appropriate agencies only if they are clearly incorrect. Since detailmen handle controlled

drugs and are part of the interstate drug shipment operation, even though they do not ship drugs themselves, the interpretation by the board of pharmacy of 54-6-41, 1953 Comp. (now Section 26-1-16 NMSA 1978) to allow licensing of detailmen is not clearly erroneous and will not be overturned by a reviewing court. *Pharmaceutical Mfrs. Ass'n v. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 51.

Right to attack validity of statute, ordinance or regulation relating to occupational or professional license as affected by applying for, or securing, license, 65 A.L.R.2d 660.

53 C.J.S. Licenses § 37.

61-1-31.1. Expedited licensure; issuance.

A. A board that issues an occupational or professional license pursuant to this 2022 act shall, as soon as practicable but no later than thirty days after an out-of-state licensee files an application for an expedited license accompanied by any required fees:

- (1) process the application; and
- (2) issue a license to a qualified applicant who submits satisfactory evidence that the applicant:
 - (a) holds a license that is current and in good standing issued by another licensing jurisdiction;
 - (b) has practiced the profession or occupation for which expedited licensure is sought for a period required by New Mexico law; and
 - (c) provides fingerprints and other information necessary for a state and national criminal background check, if required.

B. An expedited license is a one-year provisional license that confers the same rights, privileges and responsibilities as regular licenses issued by a board; provided that a board may extend an expedited license upon a showing of extenuating circumstances.

C. Before the end of the expedited license period and upon application, a board shall issue a regular license through its license renewal process. If a board requires a state or national examination for initial licensure that was not required when the out-of-state applicant was licensed in the other licensing jurisdiction, the board shall issue the expedited license and may require the license holder to pass the required examination prior to renewing the license.

D. A board by rule shall determine those states and territories of the United States and the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure. The list of those licensing jurisdictions shall be posted on the board's website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed by the board annually to determine if amendments to the rule are warranted.

History: Laws 2016, ch. 19, § 1; 2020, ch. 6, § 4; 2022, ch. 39, § 7.

The 2022 amendment, effective May 18, 2022, revised procedures for expedited licensure for professional and occupational license applicants that hold a license that is current and in good standing in another licensing jurisdiction, provided that a license issued under the expedited licensure process will effectively be a one-year provisional license that confers the same rights, privileges and responsibilities as a regular license, provided that a board may extend an expedited license upon a showing of extenuating circumstances, provided that a board shall issue a regular license, upon application, through its license renewal process before the end of the expedited license period, required a board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are needed; in Subsection A, after "license pursuant to", deleted Chapter 61 Articles 2 through 14E, 24, 24A and 31 NMSA 1978" and added "this 2022 act", after "as soon as practicable", added "but no later than thirty days", after the next occurrence of "after", deleted "a person" and

added "an out-of-state licensee", and after "files an application for", deleted "a" and added "an expedited"; in Subparagraph A(2)(a), after "issued by another", added "licensing", and after "jurisdiction", deleted "in the United States that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Articles 2 through 14E, 24, 24A and 31 NMSA 1978; and", added a new Subparagraph A(2)(b) and redesignated former Subparagraph A(2)(b) as Subparagraph A(2)(c); in Subsection B, added "An expedited", after "license is", deleted "not", added "one-year" preceding "provisional license", after "rights, privileges and responsibilities as", deleted "a license" and added "regular licenses", and after "issued", deleted "pursuant to Chapter 61 Articles 2 through 14E, 24, 24A and 31 NMSA 1978" and added "by a board; provided that a board may extend an expedited license upon a showing of extenuating circumstances"; and added Subsections C and D.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2020 amendment, effective July 1, 2020, in Subsection A, in the introductory paragraph, after "accompanied by", deleted "the" and added "any".

61-1-31.2. Temporary or provisional license; evidence of insurance.

A board may issue a temporary or other provisional license, including an expedited license, to a person licensed in another licensing jurisdiction, which license is limited as to a time, practice or other requirement of regular licensure. If a board requires regular licensees to carry professional or

occupational liability or other insurance, the board shall require the applicant for a temporary or provisional license to show evidence of having required insurance that will cover the person in New Mexico during the term of the temporary or provisional license. Each board shall provide information on the board's website that describes the insurance requirements for practice in New Mexico.

History: Laws 2022, ch. 39, § 8.

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

61-1-32. Petition for adoption, amendment or repeal of regulations.

An interested person may request in writing that a board subject to the Uniform Licensing Act adopt, amend or repeal a rule. Within one hundred twenty days after receiving the written request, the board shall either initiate proceedings in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] or issue a concise written statement of its reason for denial of the request. The denial of such a request is not subject to judicial review.

History: 1978 Comp., § 61-1-32, enacted by Laws 1981, ch. 349, § 22; 2022, ch. 39, § 9.

The 2022 amendment, effective May 18, 2022, clarified a provision that allows members of the public to make a written request to a board to adopt, amend, or repeal a rule; in the section heading, deleted "regulations" and

added "rules"; after "may request in writing that a board", added "subject to the Uniform Licensing Act", and after "proceedings in accordance with", deleted "Section 61-1-29 NMSA 1978 to adopt the regulation" and added "the State Rules Act"; and after "or issue a concise written statement of its reason for denial of the request", added "The denial of such a request is not subject to judicial review."

61-1-33. Declaratory rulings.

A. Any licensee of a board whose rights may be affected by the application of any statute enforced or administered by that board or by any decision, order or regulation of that board, may request in writing a declaratory ruling from the board concerning the applicability of the statute, decision, order or regulation to a particular set of facts. The board shall respond in writing to such a written request within one hundred twenty days.

B. The board may also issue declaratory rulings on its own motion.

C. The effect of a declaratory ruling shall be limited to the board and to the licensee, if any, who requested the declaratory ruling.

History: 1978 Comp., § 61-1-33, enacted by Laws 1981, ch. 349, § 23.

Severability. — Laws 1981, ch. 349, § 25 provided for the severability of the Uniform Licensing Act if any part or application thereof is held invalid.

61-1-34. Expedited licensure; military service members, spouses and dependents and veterans; waiver of fees.

A. A board that issues an occupational or professional license pursuant to Chapter 61 NMSA 1978 shall, as soon as practicable but no later than thirty days after a military service member or a veteran files an application, and provides a background check if required:

(1) process the application; and

(2) issue a license *prima facie* to a qualified applicant who submits satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of the armed forces of the United States.

B. A license issued pursuant to this section is a provisional license but shall confer the same rights, privileges and responsibilities as a regular license. If the military service member or veteran was licensed in a licensing jurisdiction that did not require examination, a board may require the military service member or veteran to take a board-required examination before making application for renewal.

C. A military service member or a veteran who is issued a license pursuant to this section shall not be charged a licensing fee for the first three years of licensure.

D. Each board that issues a license to practice a trade or profession shall, upon the conclusion of the state fiscal year, prepare a report on the number and type of licenses that were issued during the fiscal year under this section. The report shall be provided to the director of the office of military base planning and support not later than ninety days after the end of the fiscal year.

E. As used in this section:

(1) "licensing fee" means a fee charged at the time an application for a professional or occupational license is submitted to the state agency, board or commission and any fee charged for the processing of the application for such license; "licensing fee" does not include a fee for an annual inspection or examination of a licensee or a fee charged for copies of documents, replacement licenses or other expenses related to a professional or occupational license;

(2) "military service member" means a person who is:

(a) serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard;

(b) the spouse of a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or

(c) the child of a military service member if the child is also a dependent of that person for federal income tax purposes; and

(3) "veteran" means a person who has received an honorable discharge or separation from military service.

History: Laws 2013, ch. 33, § 1; 2020, ch. 6, § 5; 2021, ch. 92, § 8; 2022, ch. 39, § 10.

The 2022 amendment, effective May 18, 2022, clarified expedited licensing provisions for military service members, their spouses and dependent children, and for veterans, provided that a license issued pursuant to this section is a provisional license but confers the same rights, privileges and responsibilities as a regular license, eliminated the requirement to evaluate whether a qualified applicant has met minimal licensing requirements that are substantially equivalent to the licensing requirements for the license that the applicant is applying for, provided that the board may require a military service member or veteran who is licensed in a jurisdiction that did not require examination to take a board-required examination prior to renewal of the license; in Subsection A, after "background check if required", deleted "for a license accompanied by any required fees", and in Paragraph A(2), after "armed forces of the United States", deleted "and has met minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license that the applicant applies for pursuant to Chapter 61 NMSA 1978"; in Subsection B, after "A license issued pursuant to this section is", deleted "not", after "privileges and responsibilities as a", added "regular", and after "license", deleted "issued pursuant to Chapter 61 NMSA 1978" and added "If the military service member or veteran was licensed in a licensing jurisdiction that did not require examination, a board may require the military service member or veteran to take a board-required examination before making application for renewal."; deleted former Subsection C and redesignated former Subsections D through F as Subsection C through E, respectively; in Subsection C, deleted "Notwithstanding the provisions of Subsection A of this section", and after "the first three years", deleted "a license issued pursuant to this section is valid" and added "of licensure"; and in Subsection E, deleted former Paragraph E(1), which defined "license", and redesignated former Paragraphs E(2) through E(4) as Paragraphs E(1) through E(3), respectively, and in Subparagraph E(2) (c), deleted "person who is serving in the armed forces of

the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard, provided that" and added "military service member if the".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2021 amendment, effective June 18, 2021, amended the existing provision, which provides for expedited licensure and waiver of certain fees for military service members, to include all veterans, shortened the time in which the state agency, board or commission that issues an occupational or professional license must process an application from a military service member or veteran, defined "license", as used in this section, and revised the definition of "veteran", removed the definition of "recent veteran", and revised the definition of "military service member" to include a surviving spouse of a member who at the time of the member's death was serving on active duty; after "dependents", added "and veterans", and after "waiver of fees", deleted "recent veterans"; in Subsection A, after "no later than", changed "sixty" to "thirty", and after "provides", deleted "all of the documents required for the application" and added "a background check if required", and in Paragraph A(2), after "issue a license", added "prima facie"; in Subsection D, deleted "recent" preceding "veteran"; added a new Subsection E and redesignated former Subsection E as Subsection F; and in Subsection F, added Paragraph F(1) and redesignated former Paragraphs E(1) through E(3) as Paragraphs F(2) through F(4), respectively, in Paragraph F(3), Subparagraph F(3) (a), after "United States", added "as an active duty member", in Subparagraph F(3)(b), after "national guard", added "or a surviving spouse of a member who at the time of the member's death was serving on active duty", in Subparagraph F(3)(c), after "United States", added "as an active duty member", and in Paragraph F(4), deleted "recent" preceding "veteran", and after "military service", deleted "within the three years immediately preceding the

date the person applied for a professional or occupational license pursuant to this section".

The 2020 amendment, effective July 1, 2020, required state agencies, boards or commissions that issue occupational or professional licenses to process and issue a license to qualified military service members and recent veterans within sixty days of application, waived the licensing fees for the first three years of a valid license for military service members and recent veterans; defined "licensing fee" and "recent veteran" and amended the definition of "military service member" as used in this section, and after "Chapter 61", deleted "Articles 2 through 34" throughout the section; in the section heading, added "and dependents; waiver

of fees; recent"; in Subsection A, after "as soon as practicable", added "but no later than sixty days", after "military service member", deleted "the spouse of a military service member", and after "files an application", added "and provides all of the documents required for the application"; in Subsection B, after "provisional license and", deleted "must" and added "shall"; deleted former Subsections D and E; added a new Subsection D and redesignated former Subsection F as Subsection E; in Subsection E, added a new Paragraph E(1) and redesignated former Paragraph E(1) as Paragraph E(2), in Paragraph E(2), added Subparagraphs E(2)(b) and E(2)(c); and deleted former Paragraph E(2) and added Paragraph E(3).

61-1-35. Occupational or professional licenses and certification; qualification.

A. It is the policy of this state that a person is eligible for occupational or professional licensure or certification for which that person is qualified, regardless of the person's citizenship or immigration status.

B. No administrative rule or agency procedure shall be adopted or enforced that conflicts with the policy stated in Subsection A of this section.

C. This section serves as the affirmation of eligibility in this state pursuant to 8 U.S.C. Section 1621(d) for persons not lawfully present in the United States to be licensed or certified.

History: Laws 2020, ch. 53 § 1.

Effective dates. — Laws 2020, ch. 53 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

61-1-36. Criminal convictions; exclusion from licensure; disclosure requirement.

A. A board shall not exclude from licensure a person who is otherwise qualified on the sole basis that the person has been previously arrested for or convicted of a crime, unless the person has a disqualifying criminal conviction.

B. By December 31, 2021, each board shall promulgate and post on the board's website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Rules relating to licensing requirements promulgated by a board shall not use the terms "moral turpitude" or "good character". A board shall only list disqualifying criminal convictions.

C. In an administrative hearing or agency appeal, a board shall carry the burden of proof on the question of whether the exclusion from occupational or professional licensure is based upon a disqualifying criminal conviction.

D. No later than October 31 of each year, while ensuring the confidentiality of individual applicants, a board shall make available to the public an annual report for the prior fiscal year containing the following information:

- (1) the number of applicants for licensure and, of that number, the number granted a license;
- (2) the number of applicants for licensure or license renewal with a potential disqualifying criminal conviction who received notice of potential disqualification;
- (3) the number of applicants for licensure or license renewal with a potential disqualifying criminal conviction who provided a written justification with evidence of mitigation or rehabilitation; and
- (4) the number of applicants for licensure or license renewal with a potential disqualifying criminal conviction who were granted a license, denied a license for any reason or denied a license because of the conviction.

E. As used in this section, "disqualifying criminal conviction" means a conviction for a crime that is job-related for the position in question and consistent with business necessity.

History: Laws 2021 (1st S.S.), ch. 3, § 8.

Effective dates. — Laws 2021 (1st S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

61-1-37. Residency in New Mexico not a requirement for licensure.

A person who otherwise meets the requirements for a professional or occupational license shall not be denied licensure or relicensure because the person does not live in New Mexico.

History: Laws 2022, ch. 39, § 2.

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

ARTICLE 2

Optometry

- | Sec. | Sec. |
|--|--|
| 61-2-1. Short title. (Repealed effective July 1, 2024.) | 61-2-10.4. Contact lens prescription; required elements; restrictions. (Repealed effective July 1, 2024.) |
| 61-2-2. Definitions. (Repealed effective July 1, 2024.) | 61-2-10.5. Replacement contact lens prescriptions. (Repealed effective July 1, 2024.) |
| 61-2-3. Criminal offender's character evaluation. (Repealed effective July 1, 2024.) | 61-2-11. License fees; licensure under prior law. (Repealed effective July 1, 2024.) |
| 61-2-4. License required. (Repealed effective July 1, 2024.) | 61-2-12. License; display; renewal; retirement; resumption of practice. (Repealed effective July 1, 2024.) |
| 61-2-5. Board created; terms; appointment; continuance; removal. (Repealed effective July 1, 2024.) | 61-2-13. Refusal, suspension or revocation of license. (Repealed effective July 1, 2024.) |
| 61-2-6. Optometry board organization; meetings; compensation; powers and duties. (Repealed effective July 1, 2024.) | 61-2-14. Offenses. (Repealed effective July 1, 2024.) |
| 61-2-7. Disposition of funds; optometry fund created; method of payments; bonds. (Repealed effective July 1, 2024.) | 61-2-14.1. Contact lenses; spectacles; limitations on prescriptions; criminal penalty; civil remedy; exceptions. |
| 61-2-8. Qualifications for licensure as an optometrist. (Repealed effective July 1, 2024.) | 61-2-15. Exemptions. (Repealed effective July 1, 2024.) |
| 61-2-9. Licensure by examination; expedited licensure by endorsement. (Repealed effective July 1, 2024.) | 61-2-16. Freedom of choice. (Repealed effective July 1, 2024.) |
| 61-2-9.1. License issued. (Repealed effective July 1, 2024.) | 61-2-17. Power to enjoin violations. (Repealed effective July 1, 2024.) |
| 61-2-10. Repealed. | 61-2-18. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.) |
| 61-2-10.1. Repealed. | |
| 61-2-10.2. Designation of pharmaceutical agents; certification for use of certain agents. (Repealed effective July 1, 2024.) | |
| 61-2-10.3. Prescription for pharmaceutical agent or ophthalmic lenses; required elements; authority of a person who sells and dispenses eyeglasses. (Repealed effective July 1, 2024.) | |

61-2-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 2 NMSA 1978 may be cited as the "Optometry Act".

History: 1953 Comp., § 67-1-1, enacted by Laws 1973, ch. 353, § 1; 1985, ch. 241, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 8.

Optometry as within statute relating to practice of medicine, 22 A.L.R. 1173.

Constitutionality of statute prescribing conditions of practicing medicine as affected by discrimination against or in favor of optometrists, 37 A.L.R. 682, 42 A.L.R. 1342, 54 A.L.R. 600.

Constitutionality of statute or ordinance prohibiting or regulating advertising by physician, surgeon or other person professing healing arts, 54 A.L.R. 400.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Corporation or individual not himself licensed, right of, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

Prescription, one who fills, under reciprocity arrangement with optometrist, as subject to charge of practice of optometry without license, 121 A.L.R. 1455.

Liability of osteopath for medical malpractice, 73 A.L.R.4th 24.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 A.L.R.4th 273.

What constitutes practice of "optometry", 82 A.L.R.4th 816.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6 to 8.

61-2-2. Definitions. (Repealed effective July 1, 2024.)

As used in the Optometry Act:

A. "practice of optometry" means:

(1) the employment of any subjective or objective means or methods, including but not limited to the use of lenses, prisms, autorefractors or other automated testing devices, and includes the prescription or administration of drugs for the purpose of diagnosing the visual defects or abnormal conditions of the human eye and its adnexa;

(2) the employing, adapting or prescribing of preventive or corrective measures, including but not limited to lenses, prisms, contact or corneal lenses or other optical appliances, ocular exercises, vision therapy, vision training and vision rehabilitation services, and includes the prescription or administration of all drugs rational for the correction, relief or referral of visual defects or abnormal conditions of the human eye and its adnexa; and

(3) does not include the use of surgery or injections in the treatment of eye diseases except for the use of the following types of in-office minor surgical procedures:

(a) non-laser removal, destruction or drainage of superficial eyelid lesions and conjunctival cysts;

(b) removal of nonperforating foreign bodies from the cornea, conjunctiva and eyelid;

(c) non-laser corneal debridement, culture, scrape or anterior puncture, not including removal of pterygium, corneal biopsy or removal of corneal neoplasias;

(d) removal of eyelashes; and

(e) probing, dilation, irrigation or closure of the tear drainage structures of the eyelid; scalpel use is to be applied only for the purpose of use on the skin surrounding the eye;

B. "ophthalmic lens" means a lens that has a spherical, cylindrical or prismatic value, is ground pursuant to a prescription and is intended to be used as eyeglasses;

C. "contact lens" means a lens to be worn on the anterior segment of the human eye;

D. "prescription" means a written order by an optometrist or a physician for an individual patient for:

(1) ophthalmic lenses;

(2) contact lenses; or

(3) a pharmaceutical agent that is regulated pursuant to the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978];

E. "eyeglasses" means an exterior optical device using ophthalmic lenses for the correction or relief of disturbances in and anomalies of human vision; and

F. "board" means the board of optometry.

History: 1953 Comp., § 67-1-2, enacted by Laws 1973, ch. 353, § 2; 1977, ch. 30, § 1; 1979, ch. 3, § 1; 1985, ch. 241, § 2; 1995, ch. 20, § 2; 2003, ch. 274, § 1; 2007, ch. 277, § 1; 2015, ch. 131, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended the definition of prescription in the definitions section of the Optometry Act; and in Paragraph (3) of Subsection D, after "a", deleted "topical ocular pharmaceutical agent or an oral".

The 2007 amendment, effective April 2, 2007, added Paragraph (3) of Subsection A.

The 2003 amendment, effective June 20, 2003, re-wrote this section to the extent that a detailed comparison is impracticable.

The 1995 amendment, effective July 1, 1995, in Paragraph A(2), inserted "preventive or corrective measures, including" and "and oral pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978" in the first sentence, deleted "or any controlled substances" after "injections" and added the proviso at the end of the second

sentence; inserted "or for an oral pharmaceutical agent as authorized in Section 61-2-10.2 NMSA 1978" and "Device" in the introductory paragraph of Subsection D; and made stylistic changes throughout the section.

ANNOTATIONS

"Optometry". — Optometry and the practice of optometry relate basically to the testing of the loss of eyesight and the correction thereof by the use of optical appliances or other means, not including drugs, medicines or surgery. 1957-58 Op. Att'y Gen. No. 58-158.

Duplicating of lens as "practice of optometry". — A person who duplicates an ophthalmic lens without a prescription is practicing optometry and as such must be licensed under the act or is in violation of the same. 1953-54 Op. Att'y Gen. No. 54-5909.

Contact lenses. — Even though not specifically named in former Optometry Practice Act, contact lenses could be considered a lens or other optical appliance. 1957-58 Op. Att'y Gen. No. 58-158.

Audiometric testing should not be undertaken by optometrist because the various healing arts professions should stay within the confines of their individual professions as defined by the separate licensing acts enacted by the state legislature. 1957-58 Op. Att'y Gen. No. 58-158.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 8, 39, 40. 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 3 to 5.

61-2-3. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Optometry Act.

History: 1953 Comp., § 67-1-2.1, enacted by Laws 1974, ch. 78, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

61-2-4. License required. (Repealed effective July 1, 2024.)

Unless licensed pursuant to the Optometry Act, or specifically exempted or excluded from the application of all or part of that act, a person shall not:

- A. practice optometry;
- B. represent himself or offer his services as being able to practice optometry; or
- C. duplicate or replace an ophthalmic lens.

History: 1953 Comp., § 67-1-3, enacted by Laws 1973, ch. 353, § 3; 2003, ch. 274, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Cross references. — For incorporation of optometrists under Professional Corporation Act, see 53-6-1 NMSA 1978 et seq.

The 2003 amendment, effective June 20, 2003, rewrote the introductory paragraph; deleted former Subsection C which read: "prescribe eyeglasses or give a prescription to a patient; or"; redesignated former Subsection D as present Subsection C; and deleted "not including contact lenses without a current prescription or without a written authorization from the patient if the prescription is not available" at the end of present Subsection C.

ANNOTATIONS

Retail ophthalmic dispenser may not legally fit contact or corneal lenses either independently or

under the supervision of a New Mexico licensed practitioner of optometry or medicine. 1957-58 Op. Att'y Gen. No. 58-176.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 26, 37, 38, 132.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Right of corporation or individual, not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

Validity of governmental regulation, of optometry, 22 A.L.R.2d 939.

What constitutes practice of "optometry", 82 A.L.R.4th 816. 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 12, 14, 17, 26, 27.

61-2-5. Board created; terms; appointment; continuance; removal. (Repealed effective July 1, 2024.)

A. There is created a six-member "board of optometry". The board shall be administratively attached to the regulation and licensing department. The board consists of four persons who have resided in and have been continuously engaged in the practice of optometry in New Mexico for at least five years immediately prior to their appointment and two persons who shall represent the public. The public members of the board shall not have been licensed as optometrists, nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Professional members of the board shall be appointed by the governor from a list of five names for each vacancy submitted to him by the state organization affiliated with the American optometric association. Not more than one professional board member shall maintain his place of business or reside in any one county, and professional appointments shall be made on a geographical basis to effect representation of all areas of the state. Board members shall be appointed for staggered terms of five years or less, each. The term of each board member shall be made in such a manner that the term of one board member ends on June 30 of each year. Board members shall

serve until their successors have been appointed and qualified. A professional member vacancy shall be filled for the unexpired term by the appointment by the governor of a licensed optometrist from the general area of the state represented by the former member. All members of the board of optometry in office on the effective date of the Optometry Act shall serve out their unexpired terms.

C. The governor may remove a member from the board for the neglect of a duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulation or for a reason that would justify the suspension or revocation of his license to practice optometry.

D. A board member shall not serve more than two consecutive terms, and a member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member unless excused for reasons set forth in board regulations.

E. In the event of a vacancy for any reason, the board secretary shall immediately notify the governor, the board members and the state optometric association of the vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member.

History: 1953 Comp., § 67-1-4, enacted by Laws 1973, ch. 353, § 4; 1979, ch. 12, § 1; 1991, ch. 189, § 1; 2003, ch. 408, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Compiler's notes. — The "effective date of the Optometry Act", referred to in this section, is April 3, 1973, which is the effective date of Laws 1973, ch. 353, § 18.

The 2003 amendment, effective July 1, 2003, substituted "The board shall be administratively attached to the regulation and licensing department. The board consists" for "composed" following "board of optometry" near the beginning of Subsection A.

The 1991 amendment, effective June 14, 1991, substituted "four persons" for "five persons" and "two persons"

for "one person" in the first sentence and made a related stylistic change in Subsection A; in Subsection B, deleted "commencing with 1974" at the end of the fourth sentence and deleted the former fifth sentence which read "The public board member shall be appointed by the governor upon the effective date of this 1979 act to a five-year term expiring June 30, 1984, and vacancy appointments of a public member shall be for the unexpired term"; and made minor stylistic changes in Subsections A, B and C.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

61-2-6. Optometry board organization; meetings; compensation; powers and duties. (Repealed effective July 1, 2024.)

A. The board shall annually elect a chair, a vice chair and a secretary-treasurer; each shall serve until a successor is elected and qualified.

B. The board shall meet at least annually for the purpose of examining candidates for licensure. Special meetings may be called by the chair and shall be called upon the written request of a majority of the board members. A majority of the board members currently serving constitutes a quorum.

C. Members of the board may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

D. The board has the authority to determine what constitutes the practice of optometry in accordance with the provisions of the Optometry Act and has jurisdiction to exercise any other powers and duties pursuant to that act. The board may issue advisory opinions and declaratory rulings pursuant to that act and rules promulgated in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], but shall not expand the scope of practice of optometry beyond the provisions of the Optometry Act.

E. The board shall:

- (1) administer and enforce the provisions of the Optometry Act;
- (2) promulgate in accordance with the State Rules Act, all rules for the implementation and enforcement of the provisions of the Optometry Act;
- (3) adopt and use a seal;
- (4) administer oaths and take testimony on matters within the board's jurisdiction;
- (5) keep an accurate record of meetings, receipts and disbursements;
- (6) keep a record of examinations held, together with the names and addresses of persons taking the examinations and the examination results. Within thirty days after an examination, the board shall give written notice to each applicant examined of the results of the examination as to the respective applicant;

(7) certify as passing each applicant who obtains a grade of at least seventy-five percent on each subject upon which the applicant is examined; providing that an applicant failing may apply for re-examination at the next scheduled examination date;

(8) keep a book of registration in which the name, address and license number of licensees shall be recorded, together with a record of license renewals, suspensions and revocations;

(9) grant, deny, renew, suspend or revoke licenses to practice optometry in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for any cause stated in the Optometry Act;

(10) develop and administer qualifications for certification for the use of pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978, including minimum educational requirements and examination, as required by Section 61-2-10.2 NMSA 1978 and provide the board of pharmacy with an annual list of optometrists certified to use pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978; and

(11) provide for the suspension of an optometrist's license for sixty days upon a determination of use of pharmaceutical agents without prior certification in accordance with Section 61-2-10.2 NMSA 1978, after proper notice and an opportunity to be heard before the board.

History: 1953 Comp., § 67-1-5, enacted by Laws 1973, ch. 353, § 5; 1977, ch. 30, § 2; 1979, ch. 12, § 2; 1985, ch. 241, § 3; 1995, ch. 20, § 3; 2003, ch. 408, § 2; 2015, ch. 131, § 2; 2022, ch. 39, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2022 amendment, effective May 18, 2022, provided that the optometry board is subject to the provisions of the State Rules Act for promulgating rules; in the section heading, added "Optometry board"; in Subsection D, after "rules promulgated in accordance with", deleted "that" and added "the State Rules", and after "beyond the provisions of", deleted "that" and added "the Optometry"; and in Subsection E, Paragraph E(2), deleted "adopt, publish and file", and added "promulgate", and after "in accordance with the", deleted "the Uniform Licensing Act and".

The 2015 amendment, effective June 19, 2015, made changes to the statutory powers of the board of optometry; in Subsection A, after "elect a", deleted "chairman" and added "chair", after "a vice", deleted "chairman" and added "chair", and after "serve until", deleted "his" and added "a"; in Subsection B, after "called by the", deleted "chairman" and added "chair"; added new Subsection D and redesignated the succeeding subsection accordingly; in Paragraph (2) of Subsection E, after "all rules", deleted

"and regulations"; in Paragraph (7) of Subsection E, after "upon which", deleted "he" and added "the applicant"; in Paragraph (10) of Subsection E, after "for the use of", deleted "topical ocular pharmaceutical agents and oral", after "Section", deleted "61-2-10" and added "61-2-10.2", and after "certified to use", deleted "topical ocular pharmaceutical agents and oral"; and in Paragraph (11) of Subsection E, after "Section", deleted "61-2-10" and added "61-2-10.2".

The 2003 amendment, effective July 1, 2003, deleted Paragraph D(12), concerning employment of agents or attorneys.

The 1995 amendment, effective July 1, 1995, in Subsection B, substituted "at least annually" for "in January and July of each year" in the first sentence, deleted former provisions relating to the time for examination of candidates for licensure and notices of meetings, and made stylistic changes; and, in Paragraph D(10), inserted "and oral pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978" in two places.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 21 to 24.

61-2-7. Disposition of funds; optometry fund created; method of payments; bonds. (Repealed effective July 1, 2024.)

A. There is created the "optometry fund."

B. All funds received by the board and money collected under the Optometry Act shall be deposited with the state treasurer, who shall place the same to the credit of the optometry fund.

C. All payments out of the optometry fund shall be made on vouchers issued and signed by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts in the optometry fund shall be subject to the order of the board and shall be used only for the purpose of meeting necessary expenses incurred in:

(1) the performance of the provisions of the Optometry Act and the duties and powers imposed thereby; and

(2) the promotion of optometric education and standards in this state within the budgetary limits.

E. All funds which may have accumulated to the credit of the board under any previous law shall be transferred to the optometry fund and shall continue to be available for use by the

optometry board in accordance with the provisions of the Optometry Act. All money unused at the end of the fiscal year shall not revert, but shall remain in the optometry fund for use in accordance with the provisions of the Optometry Act.

F. The secretary-treasurer and any employee who handles money or who certifies the receipt or disbursement of money received by the board shall, within thirty days after election or employment by the board, execute a bond in accordance with the provisions of the Surety Bond Act [10-2-13 through 10-2-16 NMSA 1978], conditioned on the faithful performance of the duties of the office or position and on an accounting of all funds coming into his hands.

G. The secretary-treasurer shall make, at the end of each fiscal year, an itemized report to the governor of all receipts and disbursements of the board for the prior fiscal year, together with a report of the records and information required by the Optometry Act. A copy of the annual report to the governor shall be presented to the board at its first meeting in July of each year.

History: 1953 Comp., § 67-1-6, enacted by Laws 1973, ch. 353, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

optometry fund without approval from the board of optometry. 1988 Op. Att'y Gen. No. 88-63.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

ANNOTATIONS

Withdrawals from fund. — The regulation and licensing department may not withdraw money from the

61-2-8. Qualifications for licensure as an optometrist. (Repealed effective July 1, 2024.)

Each applicant for licensure as an optometrist shall furnish evidence satisfactory to the board that the applicant:

- A. has reached the age of majority; and
- B. has graduated and been awarded a doctor of optometry degree from a school or college of optometry approved and accredited by the board. In the event the applicant applies for licensure by endorsement, the applicant shall have been awarded a doctor of optometry degree from a school or college of optometry, approved and accredited by the board, which had a minimum course of study of four thousand clock hours of instruction leading to that degree.

History: 1953 Comp., § 67-1-7, enacted by Laws 1973, ch. 353, § 7; 2021, ch. 70, § 7; 2022, ch. 39, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Cross references. — For the age of majority, see 28-6-1 NMSA 1978.

For the Parental Responsibility Act, see 4-5A-1 NMSA 1978 et seq.

The 2022 amendment, effective May 18, 2022, revised the qualifications for licensure as an optometrist; deleted former Subsections B and C, which required an applicant for licensure as an optometrist to be of good moral character and to be a high school graduate or its equivalent; and redesignated former Subsection D as Subsection B.

The 2021 amendment, effective June 18, 2021, removed proof of naturalization or United States citizenship as a requirement for licensure as an optometrist; and deleted former Subsection D and redesignated the succeeding subsection accordingly.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 62. Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Validity of governmental regulation of optometry, 22 A.L.R.2d 939.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

61-2-9. Licensure by examination; expedited licensure by endorsement. (Repealed effective July 1, 2024.)

A. An applicant meeting the qualifications set forth in Section 61-2-8 NMSA 1978 for initial licensure shall file an application under oath on forms supplied by the board for an examination by the board. The examination shall be confined to the subjects within the curriculum of colleges of optometry approved and accredited by the board and shall include written tests and practical demonstrations and may include oral tests. A person issued a license by examination shall be issued the license upon payment of required fees.

B. No later than thirty days after an out-of-state licensee files an application for an expedited license, the board shall process the application and issue an expedited license in accordance with Section 61-1-31.1 NMSA 1978. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal.

C. The board by rule shall determine those states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: 1953 Comp., § 67-1-8, enacted by Laws 1973, ch. 353, § 8; 2022, ch. 39, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Cross references. — For license fees, see 61-2-11 NMSA 1978.

The 2022 amendment, effective May 18, 2022, provided for expedited licensure, provided that if the optometry board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal, required the optometry board to determine by rule, and to post on its website, which states and territories of the United States and the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for

disapproval, and required the board to review the lists annually to determine if amendments to the rule are needed; in the section heading, added "expedited"; in Subsection A, after "set forth in Section", deleted "67-1-7 NMSA 1953" and added "61-2-8 NMSA 1978 for initial licensure", deleted former Paragraph A(2); and deleted former Subsection B and added new Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 59, 60, 67.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

61-2-9.1. License issued. (Repealed effective July 1, 2024.)

Each applicant for a license to practice optometry as provided in Chapter 61, Article 2 NMSA 1978 who successfully passes the examination for licensure, possesses the required educational qualifications and meets other requirements of the Optometry Act or regulations adopted pursuant to that act is entitled to a license that carries with it the title "doctor of optometry".

History: Laws 1995, ch. 20, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

61-2-10. Repealed.

Repeals. — Laws 2015, ch. 131, § 7 repealed 61-2-10 NMSA 1978, as enacted by Laws 1977, ch. 30, § 3, relating to certification for use of topical ocular pharmaceutical

agents, display, effective June 19, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

61-2-10.1. Repealed.

Repeals. — Laws 1995, ch. 20, § 10 repealed 61-2-10.1 NMSA 1978, as enacted by Laws 1986, ch. 80, § 1, relating to treatment of glaucoma or iritis, effective July 1, 1995.

For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

61-2-10.2. Designation of pharmaceutical agents; certification for use of certain agents. (Repealed effective July 1, 2024.)

A. Subject to the provisions of the Optometry Act, optometrists qualified and certified by the board may prescribe or administer all pharmaceutical agents for the diagnosis and treatment of disease of the eye or adnexa; provided that an optometrist:

(1) may prescribe hydrocodone and hydrocodone combination medications;

(2) may administer epinephrine auto-injections to counter anaphylaxis; and

(3) shall not prescribe any other controlled substance classified in Schedule I or II pursuant to the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978].

B. The board shall issue certification for the use of pharmaceutical agents as set forth in Subsection A of this section to optometrists currently licensed by the board. To be certified, an optometrist shall submit to the board proof of having satisfactorily completed a course in pharmacology as applied to optometry, with particular emphasis on the administration of pharmaceutical agents for the purpose of examination of the human eye, and analysis of ocular functions and treatment of visual defects or abnormal conditions of the human eye and its adnexa. The course shall constitute a minimum of twenty hours of instruction in clinical pharmacology, including systemic pharmacology as applied to optometry, and shall be taught by an accredited institution approved by the board.

C. Applicants for licensure shall meet the requirements for certification in the use of pharmaceutical agents as set forth in the Optometry Act and shall successfully complete the board's examination in pharmaceutical agents prior to licensure.

D. The certification authorized by this section shall be displayed in a conspicuous place in the optometrist's principal office or place of business.

History: 1978 Comp., § 61-2-10.2, enacted by Laws 1995, ch. 20, § 5; 1996, ch. 59, § 1; 2015, ch. 131, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2015 amendment, effective June 19, 2015, provided optometrists with greater prescribing powers; in the catchline, after "Designation of", deleted "oral"; in the introductory sentence of Subsection A, after "prescribe or administer", deleted the remainder of the sentence, deleted Paragraphs (1) through (5) of Subsection A and added "all pharmaceutical agents for the diagnosis and treatment of disease of the eye or adnexa; provided that an optometrist:" to the introductory sentence of Subsection A; added new Paragraphs (1) through (3) of Subsection A; in

Subsection B, after "certification, for the use of", deleted "oral", after "licensed by the board", deleted "who are certified for the use of topical ocular pharmaceutical agents", and after "administration of", deleted "oral"; and in Subsection C, deleted "As of July 1, 1996, all", after "certification in the use of", deleted "diagnostic, topical therapeutic and oral", and after "board's examination in", deleted "diagnostic, topical and oral".

The 1996 amendment, effective May 15, 1996, inserted "qualified and certified by the board" in the introductory language of Subsection A, inserted "currently licensed by the board" in the first sentence of Subsection B, added Subsection C, and redesignated former Subsection C as Subsection D.

61-2-10.3. Prescription for pharmaceutical agent or ophthalmic lenses; required elements; authority of a person who sells and dispenses eyeglasses. (Repealed effective July 1, 2024.)

A. A prescription written for a pharmaceutical agent shall include an order given individually for the person for whom prescribed, either directly from the prescriber to a pharmacist or indirectly by means of a written or electronic order signed by the prescriber, that bears the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the agent prescribed and directions for its use and the date of issue.

B. A prescription written for ophthalmic lenses shall include:

(1) the dioptric power of spheres, cylinders and prisms, the axes of cylinders, the position of the prism base and, if so desired by the prescriber, the light transmission properties and lens curve values;

(2) the designation of pupillary distance; and

(3) the name of the patient, the date of the prescription, the expiration date of the prescription and the name and address of the prescriber.

C. A person who sells and dispenses eyeglasses upon the written prescription of a physician, surgeon or optometrist may determine:

(1) the type, form, size and shape of ophthalmic lenses;

(2) the placement of optical centers for distance-seeing and near-work;

(3) the designation of type and placement of reading segments in multivision lenses;

(4) the type and quality of frame or mounting, the type of bridge and the distance between lenses and the type, length and angling of temples; and

(5) the designation of pupillary distance.

History: Laws 2003, ch. 274, § 8; 2015, ch. 131, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2015 amendment, effective June 19, 2015, provided procedures for certain prescriptions prescribed by optometrists; in the catchline, after "Prescription for",

deleted "topical ocular pharmaceutical agent, oral"; and in Subsection A, after "prescription written for", deleted "topical ocular pharmaceutical agent or for an oral", after "means of a written", added "or electronic", and after "prescriber", deleted "his" and added "the prescriber's".

61-2-10.4. Contact lens prescription; required elements; restrictions. (Repealed effective July 1, 2024.)

A. A contact lens prescription shall:

- (1) explicitly state that it is for contact lenses;
- (2) specify the lens type;
- (3) include all specifications for the ordering and fabrication of the lenses;
- (4) include the date of issue, the name and address of the patient and the name and address of the prescriber; and
- (5) indicate a specific date of expiration, which shall be twenty-four months from the date of the prescription, unless, in the professional opinion of the prescriber, a longer or shorter expiration date is in the best interests of the patient.

B. A contact lens shall be fitted to a patient at the prescriber's place of practice.

C. A prescriber may extend a patient's prescription without completing another eye examination of the patient.

D. A prescriber shall not write a contact lens prescription until he has determined all the requirements of a satisfactory fit.

E. A contact lens prescription may include a statement of caution or a disclaimer, if the statement or disclaimer is supported by appropriate findings and documented patient records.

F. The words "OK for contact or corneal lenses", "fit with contact or corneal lenses", "contact or corneal lenses may be worn" or similar wording do not constitute a contact lens prescription.

G. If, in the professional opinion of the prescriber, a patient is not adhering to an appropriate regimen of care and follow-up with regard to the use of contact lenses, the prescriber may terminate his care of that patient. The prescriber shall notify the patient in writing that the prescriber is terminating care and shall state his reasons for doing so.

History: Laws 2003, ch. 274, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Effective dates. — Laws 2003, ch. 274 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

61-2-10.5. Replacement contact lens prescriptions. (Repealed effective July 1, 2024.)

A. As used in this section:

(1) "immediate follow-up care" is that period of contact lens fitting time required to determine a contact lens prescription that is appropriate to the documented clinical needs of the patient; and

(2) "replacement contact lens prescription" means a prescription prepared by a licensed optometrist containing the information specified in this section and written expressly for the purpose of providing lenses that have already been properly fitted.

B. A licensed optometrist shall ensure that each replacement contact lens prescription that the licensed optometrist prescribes for contact lenses:

(1) contains all the information necessary for the replacement contact lens prescription to be properly dispensed, including the:

- (a) lens manufacturer;
- (b) type of lens;
- (c) power of the lens;
- (d) base curve;

(e) lens size;
(f) name of the patient;
(g) date the prescription was given to the patient;
(h) name and office location of the licensed optometrist who writes the replacement contact lens prescription; and

(i) expiration date of the replacement contact lens prescription; and

(2) is reduced to writing and placed in the patient's permanent file.

C. After a licensed optometrist releases the patient from immediate follow-up care, the patient may request a replacement contact lens prescription from the licensed optometrist. The request shall be in writing and signed by the patient, and shall be retained in the patient's file for at least five years. If, after examination, the patient's prescription has not changed since the last examination and there are no ocular concerns, a licensed optometrist shall, upon request of the patient, provide the patient's replacement contact lens prescription to the patient without cost to the patient and without requiring the patient to purchase contact lenses.

D. In responding to a patient's request pursuant to Subsection C of this section, a licensed optometrist shall transmit the replacement contact lens prescription by mail, telephone, facsimile, e-mail or any other means of communication that will, under normal circumstances, result in the patient receiving the information within a reasonable time.

E. The replacement contact lens prescription that a licensed optometrist provides a patient:

(1) shall contain the information necessary for the proper duplication of the current prescription of the patient;

(2) shall contain, subject to the provisions of Subsection F of this section, an expiration date for the replacement contact lens prescription of not more than twenty-four months from the time the patient was first examined; and

(3) may contain wearing guidelines or specific instructions for use of the contact lenses by the patient, or both.

F. The licensed optometrist shall enter into the patient's medical record the valid clinical reasons for a shorter expiration date and shall provide the patient with a written and oral explanation of the clinical reasons for a shorter expiration date.

G. When a patient's prescription is dispensed by a person other than a licensed optometrist or a person associated directly or indirectly with the licensed optometrist, the licensed optometrist is not liable for any injury to or condition of a patient caused solely by the negligence of the dispenser.

H. A licensed optometrist who releases a replacement contact lens prescription to a patient may provide the patient with a written statement that wearing improperly fitted contact lenses may cause harm to the patient's eyes and that the patient should have an eye examination if there are any changes in the patient's vision, including pain or vision loss.

I. A licensed optometrist who fills or provides a contact lens prescription shall maintain a record of that prescription in accordance with rules promulgated by the board.

J. A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of that prescription for five years.

K. The board may impose a civil fine of no more than one thousand dollars (\$1,000) on a licensed optometrist who fails to provide a replacement contact lens prescription, knowingly dispenses contact lenses without a valid and unexpired replacement contact lens prescription or who otherwise fails to comply with the provisions of this section.

L. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless the person has at the time of sale or dispensing a copy of a valid, unexpired prescription or has obtained verification of a valid, unexpired prescription in accordance with Subsection M of this section.

M. A contact lens may not be sold, dispensed or distributed to a patient in this state by a seller of contact lenses unless one of the following has occurred:

(1) the patient has given or mailed the seller an original, valid, unexpired written contact lens prescription;

(2) the prescribing licensed optometrist has given, mailed or transmitted by facsimile transmission a copy of a valid, unexpired written contact lens prescription to a seller designated in writing by the patient to act on the patient's behalf; or

(3) the prescribing licensed optometrist has orally or in writing verified the valid, unexpired prescription to a seller designated by the patient to act on his behalf.

N. A verification shall not be provided pursuant to Paragraph (3) of Subsection M of this section unless the patient has designated the contact lens seller to act on the patient's behalf. Verification by the prescribing licensed optometrist shall take place pursuant to the following procedure:

(1) a request for a verification shall be made by the seller to the prescribing licensed optometrist by facsimile, mail or telephone;

(2) if received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within three working days of receipt;

(3) if not received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within three working days after 9:00 a.m. of the next working day following receipt;

(4) in any case where the existence of a valid designation by the patient of a seller to act on the patient's behalf is in question, the prescriber shall promptly contact the patient to determine if a designation is in effect. Under no circumstances shall a non-response to a verification request be deemed to authorize, validate or confirm any prescription; and

(5) as used in this subsection, "working day" means any Saturday or Sunday that the office of the prescribing licensed optometrist is open and Monday through Friday but does not include a holiday.

O. A person who knowingly violates the provisions of Subsection L of this section is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

P. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he is registered with the board of pharmacy as a seller or dispenser of contact lenses; provided that pharmacies, clinics and hospitals licensed by the board of pharmacy shall be exempt from this requirement. The board of pharmacy shall promulgate rules to establish the application procedures for obtaining registration and may include a requirement for payment of a fee by the applicant, but the amount of the fee shall not exceed the costs of implementing the registration requirement. The board of pharmacy shall maintain a current list of all registered sellers and dispensers of contact lenses. A person who is not registered pursuant to this subsection and knowingly sells or dispenses a contact lens to a resident of this state is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

History: Laws 2003, ch. 274, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Effective dates. — Laws 2003, ch. 274 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

61-2-11. License fees; licensure under prior law. (Repealed effective July 1, 2024.)

A. The board shall set fees for the following by rule:

- (1) application fee in an amount not to exceed five hundred dollars (\$500);
- (2) examination fee in an amount not to exceed five hundred dollars (\$500);
- (3) except as provided in Section 61-1-34 NMSA 1978, licensure fee in an amount not to exceed four hundred dollars (\$400); and
- (4) issuance fee for pharmaceutical certification in an amount not to exceed one hundred dollars (\$100).

B. A person licensed as an optometrist under any prior laws of this state, whose license is valid on April 3, 1973, shall be held to be licensed under the provisions of the Optometry Act and shall be entitled to the annual renewal of the person's license as provided in that act.

C. Prior to engaging in the active practice of optometry in this state, a licensee shall furnish the board evidence that the licensee holds a registration number with the taxation and revenue department and has completed, as a condition of licensure by endorsement, the continuing education requirements as set by the rules of the board.

History: 1953 Comp., § 67-1-9, enacted by Laws 1973, ch. 353, § 9; 1981, ch. 50, § 1; 1995, ch. 20, § 6; 1996, ch. 59, § 2; 2003, ch. 274, § 3; 2020, ch. 6, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, Paragraph A(3), added "except as provided in Section 61-1-34 NMSA 1978".

The 2003 amendment, effective June 20, 2003, deleted Paragraph A(5) which read: "annual license renewal fee in an amount not to exceed three hundred dollars (\$300); and"; deleted Paragraph A(6) which read: "late renewal penalty fee in an amount not to exceed one hundred

dollars (\$100)"; deleted "present" following "renewal of his" in Subsection B; and substituted "the" for "such" following "licensure by endorsement" in Subsection C.

The 1996 amendment, effective May 15, 1996, rewrote Subsection A and substituted "April 3, 1973" for "the effective date of the Optometry Act" near the beginning of Subsection B.

The 1995 amendment, effective July 1, 1995, substituted "taxation and revenue department" for "revenue division" in Subsection C and made a stylistic change.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

61-2-12. License; display; renewal; retirement; resumption of practice. (Repealed effective July 1, 2024.)

A. A person to whom a license as an optometrist has been issued shall display the license in a conspicuous place in the licensee's principal office or place of business.

B. A license shall be renewed annually on or before July 1. Except as provided in Section 61-1-34 NMSA 1978, the licensee shall pay to the secretary-treasurer of the board the required fees. The board shall promulgate rules establishing additional requirements and procedures for renewal of a license. It shall also promulgate rules establishing a fee schedule for renewal of a license, but a specific fee shall not exceed five hundred dollars (\$500).

C. Failure to renew a license pursuant to this section terminates the optometrist's authority to practice optometry, and the former licensee shall fulfill all current requirements for licensing and therapeutic drug certification if application for licensing or certification is made after termination.

D. An optometrist who intends to retire from the practice of optometry shall notify the board in writing before the expiration of the optometrist's license, and the secretary-treasurer of the board shall acknowledge the receipt of the notice and record it. If within a period of five years from the year of retirement the optometrist desires to resume practice, the optometrist shall notify the board in writing, and, upon giving proof of completing refresher courses prescribed by rules of the board and the payment of any required fees, the license shall be restored to the optometrist in full effect.

E. Before engaging in the practice of optometry, a licensed optometrist shall notify the secretary-treasurer of the board in writing of the address at which the optometrist intends to begin practice and subsequently of changes in the optometrist's business address or location. Notices the board is required to give a licensee shall legally have been given when delivered to the latest address furnished by the licensee to the board.

History: 1953 Comp., § 67-1-10, enacted by Laws 1973, ch. 353, § 10; 1995, ch. 20, § 7; 2003, ch. 274, § 4; 2020, ch. 6, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Cross references. — For penalties for violation of Optometry Act, see 61-2-14 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection B, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 1995 amendment, effective July 1, 1995, inserted "as an optometrist" in Subsection A; substituted "secretary-treasurer" for "secretary" throughout the section; substituted "revenue processing division of the taxation and revenue department" for "bureau of revenue" in Subsection B; inserted "to include a minimum of six credit hours of continuing education in ocular therapeutic pharmacological agents" in the first sentence of Subsection C; and made stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 11.

61-2-13. Refusal, suspension or revocation of license. (Repealed effective July 1, 2024.)

The board may refuse to issue, suspend or revoke any license, in accordance with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], for any of the following reasons:

- A. conviction of a felony, as shown by a certified copy of the record of the court of conviction;
- B. malpractice or incompetence;
- C. continued practice by a person knowingly having an infectious or contagious disease;
- D. advertising by means of knowingly false, misleading or deceptive statements or advertising or attempting to practice under a name other than one's own;
- E. habitual drunkenness or addiction to the use of habit-forming drugs;
- F. aiding or abetting in the practice of optometry any person not duly licensed to practice optometry in this state;
- G. lending, leasing or in any other manner placing his certificate of license at the disposal or in the service of any person not licensed to practice optometry in this state;
- H. employing, procuring or inducing an unlicensed person to practice optometry in this state;
- I. violating any of the provisions of the Optometry Act; or
- J. committing any act defined as "unprofessional conduct" by regulation of the board filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978]. Without limiting the right of the board to determine what acts on the part of a licensee constitute unprofessional conduct, the following acts shall be deemed to be unprofessional conduct:

- (1) any conduct of a character tending to deceive or defraud the public;
- (2) the obtaining of a fee by fraud or misrepresentation;
- (3) charging unusual, unreasonable or exorbitant fees;
- (4) "splitting" or dividing a fee with any person;
- (5) advertising professional superiority;
- (6) advertising by any means, or granting, a discount for professional services, prosthetic devices, eyeglasses, lenses, frames or mountings whether sold separately or as part of the professional services; or
- (7) using any type of "price advertising" which would tend to imply the furnishing of professional services without cost or at a reduced cost to the public.

History: 1953 Comp., § 67-1-11, enacted by Laws 1973, ch. 353, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

ANNOTATIONS

Constitutional basis for prohibitions against advertising. — Laws prohibiting price advertising and similar advertising by professional persons have as their constitutional basis the rationale that the state has such an interest in the health of its citizens that it may prevent advertising or price promulgation by professional individuals engaged in treating the human body or any part thereof. 1963-64 Op. Att'y Gen. No. 63-119 (rendered under former law).

Applicability to optometrists in state. — An optometrist doing business in New Mexico must carry on the profession in accordance with the laws of this state. 1969 Op. Att'y Gen. No. 69-80.

Out-of-state advertising. — The placing of prohibited trade advertising with out-of-state media by a New Mexico optometrist fell within the prohibition of the former

New Mexico Optometry Act (67-7-1, 1953 Comp. et seq.). 1969 Op. Att'y Gen. No. 69-80.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 100.

Right of corporation or individual, not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Stay pending review of judgment or order revoking or suspending license, 166 A.L.R. 575.

Validity of governmental regulation of optometry, 22 A.L.R.2d 939.

Comment note on hearsay evidence in proceedings before state administrative agencies, 36 A.L.R.3d 12.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104. Ophthalmological malpractice, 30 A.L.R.5th 571.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 35 to 42.

61-2-14. Offenses. (Repealed effective July 1, 2024.)

A. A person who commits one of the following acts is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978:

(1) practicing or attempting to practice optometry without a valid current license issued by the board;

(2) using or attempting to use a pharmaceutical agent that is regulated pursuant to the provisions of the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] without having the certification for its use issued by the board, unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act; or

(3) permitting a person in one's employ, supervision or control to practice optometry or use pharmaceutical agents described in Paragraph (2) of this subsection unless that person is licensed and certified in accordance with the provisions of the Optometry Act or unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act.

B. A person who commits one of the following acts is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978:

(1) making a willfully false oath or affirmation where the oath or affirmation is required by the Optometry Act;

(2) selling or using any designation, diploma or certificate tending to imply that one is a practitioner of optometry, unless one holds a license as provided by the Optometry Act;

(3) refusing, after a request, to provide a patient a copy of the patient's eyeglasses prescription, if the prescription is not over one year old;

(4) duplicating or replacing an ophthalmic lens without a current prescription not more than two years old or without a written authorization from the patient if the prescription is not available;

(5) except for licensed optometrists, using any trial lenses, trial frames, graduated test cards or other appliances or instruments for the purpose of examining the eyes or rendering assistance to anyone who desires to have an examination of the eyes, but it is not the intent of this paragraph to prevent a school nurse, schoolteacher or employee in public service from ascertaining the possible need of vision services, if the person, clinic or program does not attempt to diagnose or prescribe ophthalmic lenses for the eyes or recommend any particular practitioner or system of practice;

(6) advertising the fabricating, adapting, employing, providing, sale or duplication of eyeglasses or any part of them, but this paragraph does not preclude the use of a business name, trade name or trademark not relating to price or the use of the address, telephone number, office hours and designation of the provider, in or at retail outlets, on business cards, eyeglass cleaners and cases or in news media or in public directories, mailings and announcements of location openings or the use of the words "doctors' prescriptions for eyeglasses filled" or "eyeglass repairs, replacements and adjustments"; or

(7) selling of prescription eyeglasses or contact lenses, frames or mountings for lenses in an establishment in which the majority of its income is not derived from being engaged in that endeavor.

History: 1953 Comp., § 67-1-12, enacted by Laws 1973, ch. 353, § 12; 1985, ch. 241, § 5; 1995, ch. 20, § 8; 1996, ch. 59, § 3; 2003, ch. 274, § 5; 2015, ch. 131, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Cross references. — For the Criminal Code, see 30-1-1 NMSA 1978 and notes thereto.

The 2015 amendment, effective June 19, 2015, provided for a generalized "pharmaceutical agent" by removing references to certain types of pharmaceutical agents in the provision relating to violations of the Optometry Act; in Paragraph (2) of Subsection A, after "attempting to use a", deleted "topical ocular pharmaceutical agent or an oral"; in Paragraph (3) of Subsection B, after "a copy of", deleted "his" and added "the patient's"; in Paragraph (5) of Subsection B, after "paragraph to prevent", deleted "any" and added "a"; and in Paragraph (6) of Subsection B, after "eyeglasses or any part", deleted "thereof" and added "of them".

The 2003 amendment, effective June 20, 2003, re-wrote the section to the extent that a detailed comparison is impracticable.

The 1996 amendment, effective May 15, 1996, added the language beginning "unless, however, the administration of pharmaceutical agents" at the end of Paragraph A(2), deleted "licensed or" following "unless that person is" in Paragraph A(3), and added the language beginning "or unless the administration of pharmaceutical agents" at the end of Paragraph A(3).

The 1995 amendment, effective July 1, 1995, added Subsection A; designated the former introductory paragraph as Subsection B and rewrote the provision; redesignated former Subsections C through F as Paragraphs B(1) through B(4); deleted former Subsection G prohibiting practicing optometry when one's license has been revoked or suspended; designated former Subsections H through

J as Paragraphs B(5) through B(7); and made related and other stylistic changes throughout the section.

ANNOTATIONS

Constitutionality of advertising restraints.

Subsection (m) of 67-7-13, 1953 Comp., prohibiting price advertising of eyeglasses, lenses and the like, did not impose a constitutionally prohibited burden upon interstate commerce, and was not preempted by federal legislation; nor did it constitute a deprivation of property in violation of the due process clause or a violation of the privileges and immunities clause of the fourteenth amendment. *Head v. N.M. Bd. of Exam'rs*, 374 U.S. 424, 83 S. Ct. 1759, 10 L. Ed. 2d 983 (1963).

Freedom of speech issue not decided. — Argument that injunction against a newspaper and radio station, prohibiting the accepting or publishing within New Mexico of a Texas optometrist's advertisement, constituted an invalid restraint upon freedom of speech protected by the fourteenth amendment was neither made to the state courts nor reserved in notice of appeal, and would not be considered by the supreme court. *Head v. N.M. Bd. of Exam'rs*, 374 U.S. 424, 83 S. Ct. 1759, 10 L. Ed. 2d 983 (1963).

Cable television system not "advertising". — Cable television system which did not sell advertising space, nor receive any compensation whatsoever from advertisers or broadcasters for the electronic service it performed, and was supported entirely by the sale of subscriptions to viewers, in return for which it performed the service of increasing the viewer's capacity to receive television signals, was not "advertising" within meaning of statute forbidding advertising of optometry and optometry services; neither did operators share a "community of purpose" with out-of-state optometrists or broadcasters sufficient to render them liable as accessories. *Midwest Video v. Campbell*, 1969-NMSC-034, 80 N.M. 116, 452 P.2d 185.

Fact that one consequence of the cable television systems' activities was to expose a number of New Mexicans to price advertising inducements to which they might not otherwise have been exposed was merely an incidental effect of an otherwise lawful activity, and did not, of itself, absent intention or purpose, make the activity "advertising." *Midwest Video v. Campbell*, 1969-NMSC-034, 80 N.M. 116, 452 P.2d 185.

Stay of federal proceedings pending state construction. — Former 67-7-13(m), 1953 Comp., which

forbade the advertising of prices or terms on eyeglasses, spectacles, etc., should have been exposed to state construction as to its application to the plaintiffs or limiting action before the federal courts were asked to pass on its constitutionality; therefore, proceedings challenging its validity before a three-judge federal district court would be stayed for a reasonable time pending state court interpretation of the statute. *Midwest Video Corp. v. Campbell*, 250 F. Supp. 158 (D.N.M. 1965).

Applicability to optometrists in state. — An optometrist doing business in New Mexico must carry on the profession in accordance with the laws of this state. 1969 Op. Att'y Gen. No. 69-80.

Constitutional basis for prohibitions against advertising. — Laws prohibiting price advertising and similar advertising by professional persons have as their constitutional basis the rationale that the state has such an interest in the health of its citizens that it may prevent advertising or price promulgation by professional individuals engaged in treating the human body or any part thereof. 1963-64 Op. Att'y Gen. No. 63-119 (rendered under former law).

Out-of-state advertising. — The placing of prohibited trade advertising with out-of-state media by a New Mexico optometrist would lie within the prohibition of the former New Mexico Optometry Act (67-7-1, 1953 Comp. et seq.). 1969 Op. Att'y Gen. No. 69-80.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 131, 135, 141, 143, 144.

Constitutionality of statute or ordinance prohibiting or regulating advertising by physician, surgeon or other person professing healing arts, 54 A.L.R. 400.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Right of corporation or individual, not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

One who fills prescription under reciprocity arrangement with optometrist as subject to charge of practice of optometry without license, 121 A.L.R. 1455.

What constitutes practice of "optometry," 82 A.L.R.4th 816.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 12, 28, 53 to 57.

61-2-14.1. Contact lenses; spectacles; limitations on prescriptions; criminal penalty; civil remedy; exceptions.

A. Unless the person is licensed pursuant to the Optometry Act or the Medical Practice Act [Chapter 41, Article 5 NMSA 1978], a person shall not:

(1) perform an eye examination on an individual physically located in the state at the time of the eye examination; or

(2) write a prescription for contact lenses or spectacles.

B. A person shall not write a prescription for contact lenses or spectacles unless an eye examination is performed before writing the prescription. The prescription shall take into consideration any medical findings and any refractive error determined during the eye examination.

C. A person who violates a provision of this section is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. The board of optometry, the New Mexico medical board or any other person potentially aggrieved by a violation of this section may bring a suit in a court of competent jurisdiction to enjoin a violation of a provision of this section.

E. Nothing in this section shall be construed to prohibit:

- (1) a health care provider from using telehealth in accordance with the provisions of the New Mexico Telehealth Act [Chapter 24, Article 25 NMSA 1978] for ocular diseases;
- (2) a vision screening performed in a school by a nurse, physician assistant, osteopathic physician assistant or another provider otherwise authorized pursuant to state law;
- (3) an optician from completing a prescription for spectacles or contact lenses in accordance with the provisions of the Optometry Act;
- (4) a technician from providing an eye care screening program at a health fair, not-for-profit event, not-for-profit public vision van service, public health event or other similar event;
- (5) a physician assistant licensed pursuant to the Medical Practice Act, or an osteopathic physician assistant licensed pursuant to the Medical Practice Act, working under the supervision of an ophthalmologist licensed pursuant to the Medical Practice Act, from performing an eye examination on an individual physically located in the state at the time of the eye examination; or

(6) a vision screening performed by another provider otherwise authorized pursuant to state law.

F. As used in this section:

- (1) "autorefractor" means any electronic computer or automated testing device used remotely, in person or through any other communication interface to provide an objective or subjective measurement of an individual's refractive error;
- (2) "contact lens" means any lens placed directly on the surface of the eye, regardless of whether or not it is intended to correct a visual defect, including any cosmetic, therapeutic or corrective lens;
- (3) "eye examination" means an in-person assessment at a physician's office or an optometrist's office, in a hospital setting or in a hospital health system setting that:
 - (a) is performed in accordance with the applicable standard of care;
 - (b) consists of an assessment of the ocular health and visual status of an individual;
 - (c) does not consist of solely objective or subjective refractive data or information generated by an automated testing device, including an autorefractor or kiosk, in order to establish a medical diagnosis or for the determination of refractive error; and
 - (d) is performed on an individual who is physically located in this state at the time of the assessment;
- (4) "kiosk" means any automatic or electronic equipment, application or computer software designed to be used on a telephone, teleconference device, computer, virtual reality device or internet-based device that can be used remotely, in person or through any other communication interface to conduct an eye examination or determine refractive error;
- (5) "prescription" means an optometrist's or ophthalmologist's handwritten or electronic order for spectacle lenses or contact lenses based on an eye examination that corrects refractive error; and
- (6) "spectacles" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer, commonly known as "glasses" or "eyeglasses", including spectacles that may be adjusted by the wearer to achieve different types of visual correction or enhancement. "Spectacles" does not mean:
 - (a) an optical instrument or device that is not intended to correct or enhance vision or that does not require consideration of the visual status of the individual who will use the optical instrument or device; or
 - (b) eyewear that is sold without a prescription.

History: Laws 2019, ch. 15, § 1; 2021, ch. 54, § 15.

Compiler's notes. — Laws 2019, ch. 15, § 1 was not enacted as part of the Optometry Act, but was compiled there for the convenience of the user.

The 2021 amendment, effective June 18, 2021, removed references to the Osteopathic Medicine Act and the board of osteopathic medicine; in Subsection A, after

"Medical Practice Act", deleted "or the Osteopathic Medicine Act"; in Subsection D, after "New Mexico medical board", deleted "the board of osteopathic medicine"; in Subsection E, in Paragraph E(5), after "pursuant to the", deleted "Osteopathic Medicine" and added "Medical Practice", and after the next occurrence of "Medical Practice Act", deleted "or the Osteopathic Medicine Act".

61-2-15. Exemptions. (Repealed effective July 1, 2024.)

A. Except for the provisions of Section 61-2-16 NMSA 1978 and as provided in this subsection, the Optometry Act does not apply to a licensed physician or a person, clinic or program under his responsible supervision and control, provided that the person, clinic or program under the responsible supervision and control of the licensed physician shall not use either loose or fixed trial lenses for the sole purpose of determining the prescription for eyeglasses or contact lenses.

B. Except as provided in Sections 61-2-2, 61-2-14, 61-2-16 and 61-2-17 NMSA 1978, the Optometry Act does not apply to a person selling eyeglasses who does not represent himself as being qualified to detect or correct ocular anomalies and who does not traffic upon assumed skill in adapting ophthalmic lenses to the eyes.

History: 1953 Comp., § 67-1-13, enacted by Laws 1973, ch. 353, § 13; 2003, ch. 274, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

ANNOTATIONS

Person who duplicates ophthalmic lens without prescription is practicing optometry and as such must be licensed under the act or is in violation of the same. 1953-54 Op. Att'y Gen. No. 54-5909.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 13.

61-2-16. Freedom of choice. (Repealed effective July 1, 2024.)

A. In expending public money for any purpose involving the care of vision, any state board, commission or department created or existing by statute, including public schools or other state or municipal agencies or any of their employees, who, in the performance of their duties, are responsible for such expenditures shall not, directly or indirectly, refer the name or address of any particular ocular practitioner or system of practice to any person eligible for a vision examination or the correction of any visual or muscular anomaly, except in emergency situations.

B. Every policy of insurance or medical or health service contract providing for payment or reimbursement for any eye care service shall be construed to include payment or reimbursement for professional services rendered by a licensed optometrist, and no insurance policy or medical or health service contract shall discriminate between ocular practitioners rendering similar services.

History: 1953 Comp., § 67-1-14, enacted by Laws 1973, ch. 353, § 14; 1985, ch. 241, § 6; 2003, ch. 274, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted the last sentence in Subsection A which read: "For the purpose of this subsection, 'ocular practitioner' includes all validly licensed optometrists, physicians and surgeons."

61-2-17. Power to enjoin violations. (Repealed effective July 1, 2024.)

Upon conviction of any person for violation of any provision of the Optometry Act, the board or any interested person may, in addition to the penalty herein provided, petition the district court for an order restraining and enjoining said person from further or continued violation of the Optometry Act and the order may be enforced by contempt proceedings.

History: 1953 Comp., § 67-1-15, enacted by Laws 1973, ch. 353, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Cross references. — For penalties for violation of the Optometry Act, see 61-2-14 NMSA 1978.

Severability. — Laws 1973, ch. 353, § 16, provided for the severability of the Optometry Act if any part or application thereof is found invalid.

61-2-18. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The board of optometry is terminated on July 1, 2023 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Optometry Act until July 1, 2024. Effective July 1, 2024, the Optometry Act is repealed.

History: 1978 Comp., § 61-2-18, enacted by Laws 1979, ch. 12, § 3; 1981, ch. 241, § 16; 1985, ch. 87, § 1; 1991, ch. 189, § 2; 1997, ch. 46, § 2; 2003, ch. 428, § 1; 2009, ch. 96, § 2; 2015, ch. 119, § 2.

The 2015 amendment, effective June 19, 2015, extended the termination date for the board of optometry to July 1, 2023, and the repeal date to July 1, 2024.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, substituted "the Optometry Act" for "Chapter 61, Article 2

NMSA 1978" throughout the section, and in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004".

The 1997 amendment, effective June 20, 1997, substituted "2003" for "1997", substituted "2004" for "1998" and substituted "July 1, 2004, Chapter 61; Article 2 NMSA 1978" for "July 1, 1998, Article 2 of Chapter 61, NMSA 1978".

The 1991 amendment, effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and "July 1, 1998" for "July 1, 1992" in the first and third sentences.

ARTICLE 3

Nursing

Sec. 61-3-1. Short title.

61-3-2. Purpose.

61-3-3. Definitions.

61-3-4. Criminal offender's character evaluation.

61-3-5. License required.

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61-3-9. Board meetings; quorum; officers.

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61-3-11. Bonds; expenses.

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61-3-18. Qualifications for licensure as a licensed practical nurse.

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Sec.

61-3-21. Registration under previous law.

61-3-22. Fees for licensure as a licensed practical nurse.

61-3-23. Permit to practice for graduate nurses.

61-3-23.1. Permit to practice for graduate nursing specialties.

61-3-23.2. Certified nurse practitioner; qualifications; practice; examination; endorsement; expedited licensure.

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61-3-26. Schools of nursing; standards; approval.

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61-3-28. Disciplinary proceedings; judicial review; application of uniform licensing act; limitation.

61-3-29. Exceptions.

61-3-29.1. Diversion program created; advisory committee; renewal fee; requirements; immunity from civil actions.

61-3-30. Violations; penalties.

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61-3-1. Short title.

Chapter 61, Article 3 NMSA 1978 may be cited as the "Nursing Practice Act".

History: 1953 Comp., § 67-2-1, enacted by Laws 1968, ch. 44, § 1; 2003, ch. 276, § 1; 2003, ch. 282, § 1; 2003, ch. 307, § 4.

Cross references. — For Sexual Assault Survivors Emergency Care Act, see 24-10D-1 NMSA 1978 et seq.

The 2003 amendment, effective January 1, 2004, substituted "Chapter 61, Article 3 NMSA 1978" for "Sections 61-3-1 through 61-3-30 NMSA 1978". Identical amendments were also made to this section by Laws 2003,

ch. 276, § 1 and Laws 2003, ch. 282, § 1. This section was set out as amended by Laws 2003, ch. 307, § 4. See 12-1-8 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 5.

61-3-2. Purpose.

The purpose of the Nursing Practice Act is to promote, preserve and protect the public health, safety and welfare by regulating the practice of nursing, schools of nursing, hemodialysis technicians and medication aides in the state.

History: 1953 Comp., § 67-2-2, enacted by Laws 1968, ch. 44, § 2; 1991, ch. 190, § 1; 2001, ch. 137, § 1.

The 2001 amendment, effective June 15, 2001, inserted "hemodialysis technicians and medication aides".

The 1991 amendment, effective June 14, 1991, substituted "promote, preserve and protect the public health, safety and welfare" for "safeguard life and health and to promote the public welfare" and made a minor stylistic change.

ANNOTATIONS

Requiring nurse to "float" not unlawful or serious misconduct. — A hospital's "floating" policy is not necessarily something that "public policy would condemn." Therefore, requiring a nurse to "float" is not the kind of unlawful or serious misconduct for which recognition of the tort of wrongful discharge was intended. *Francis v. Memorial Gen. Hosp.*, 1986-NMSC-072, 104 N.M. 698, 726 P.2d 852.

61-3-3. Definitions.

As used in the Nursing Practice Act:

A. "advanced practice" means the practice of professional registered nursing by a registered nurse who has been prepared through additional formal education as provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to function beyond the scope of practice of professional registered nursing, including certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;

B. "board" means the board of nursing;

C. "certified hemodialysis technician" means a person who is certified by the board to assist in the direct care of a patient undergoing hemodialysis, under the supervision and at the direction of a registered nurse or a licensed practical nurse, according to the rules adopted by the board;

D. "certified medication aide" means a person who is certified by the board to administer medications under the supervision and at the direction of a registered nurse or a licensed practical nurse, according to the rules adopted by the board;

E. "certified nurse practitioner" means a registered nurse who is licensed by the board for advanced practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the board;

F. "certified registered nurse anesthetist" means a registered nurse who is licensed by the board for advanced practice as a certified registered nurse anesthetist and whose name and pertinent information are entered on the list of certified registered nurse anesthetists maintained by the board;

G. "clinical nurse specialist" means a registered nurse who is licensed by the board for advanced practice as a clinical nurse specialist and whose name and pertinent information are entered on the list of clinical nurse specialists maintained by the board;

H. "collaboration" means the cooperative working relationship with another health care provider in the provision of patient care, and such collaborative practice includes the discussion of patient diagnosis and cooperation in the management and delivery of health care;

I. "licensed practical nurse" means a nurse who practices licensed practical nursing and whose name and pertinent information are entered in the register of licensed practical nurses maintained

by the board or a nurse who practices licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact [61-3-24.1 NMSA 1978];

J. "licensed practical nursing" means the practice of a directed scope of nursing requiring basic knowledge of the biological, physical, social and behavioral sciences and nursing procedures, which practice is at the direction of a registered nurse, physician or dentist licensed to practice in this state. This practice includes but is not limited to:

- (1) contributing to the assessment of the health status of individuals, families and communities;
- (2) participating in the development and modification of the plan of care;
- (3) implementing appropriate aspects of the plan of care commensurate with education and verified competence;
- (4) collaborating with other health care professionals in the management of health care; and
- (5) participating in the evaluation of responses to interventions;

K. "Nurse Licensure Compact" means the agreement entered into between New Mexico and other jurisdictions permitting the practice of professional registered nursing or licensed practical nursing pursuant to a multistate licensure privilege;

L. "nursing diagnosis" means a clinical judgment about individual, family or community responses to actual or potential health problems or life processes, which judgment provides a basis for the selection of nursing interventions to achieve outcomes for which the person making the judgment is accountable;

M. "practice of nursing" means assisting individuals, families or communities in maintaining or attaining optimal health, assessing and implementing a plan of care to accomplish defined goals and evaluating responses to care and treatment. This practice is based on specialized knowledge, judgment and nursing skills acquired through educational preparation in nursing and in the biological, physical, social and behavioral sciences and includes but is not limited to:

- (1) initiating and maintaining comfort measures;
- (2) promoting and supporting optimal human functions and responses;
- (3) establishing an environment conducive to well-being or to the support of a dignified death;
- (4) collaborating on the health care regimen;
- (5) administering medications and performing treatments prescribed by a person authorized in this state or in any other state in the United States to prescribe them;
- (6) recording and reporting nursing observations, assessments, interventions and responses to health care;
- (7) providing counseling and health teaching;
- (8) delegating and supervising nursing interventions that may be performed safely by others and are not in conflict with the Nursing Practice Act; and
- (9) maintaining accountability for safe and effective nursing care;

N. "professional registered nursing" means the practice of the full scope of nursing requiring substantial knowledge of the biological, physical, social and behavioral sciences and of nursing theory and may include advanced practice pursuant to the Nursing Practice Act. This practice includes but is not limited to:

- (1) assessing the health status of individuals, families and communities;
- (2) establishing a nursing diagnosis;
- (3) establishing goals to meet identified health care needs;
- (4) developing a plan of care;
- (5) determining nursing intervention to implement the plan of care;
- (6) implementing the plan of care commensurate with education and verified competence;
- (7) evaluating responses to interventions;
- (8) teaching based on the theory and practice of nursing;
- (9) managing and supervising the practice of nursing;
- (10) collaborating with other health care professionals in the management of health care; and
- (11) conducting nursing research;

O. "registered nurse" means a nurse who practices professional registered nursing and whose name and pertinent information are entered in the register of licensed registered nurses maintained by the board or a nurse who practices professional registered nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact;

P. "scope of practice" means the parameters within which nurses practice based upon education, experience, licensure, certification and expertise; and

Q. "training program" means an educational program approved by the board.

History: 1978 Comp., § 61-3-3, enacted by Laws 1991, ch. 190, § 2; 1993, ch. 61, § 1; 1997, ch. 244, § 3; 2001, ch. 137, § 2; 2003, ch. 307, § 5; 2005, ch. 307, § 1.

Repeals and reenactments. — Laws 1991, ch. 190, § 2 repealed former 61-3-3 NMSA 1978, as enacted by Laws 1968, ch. 44, § 3, relating to definitions, effective June 14, 1991, and enacted the above section.

Cross references. — For scope of medical practice, see 61-6-6 NMSA 1978.

The 2005 amendment, effective April 7, 2005, added Subsection C to define "certified hemodialysis technician"; added Subsection D to define "certified medication aide"; deleted "emergency procedures" in Subsection G, which was defined as airway and vascular access procedures; and added Subsection Q to define "training program".

The 2003 amendment, effective January 1, 2004, added "or a nurse who practices licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact" at the end of Subsection H; inserted present Subsection J and redesignated the subsequent paragraphs accordingly; and added "or a nurse who practices professional registered nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact" at the end of present Subsection N.

The 2001 amendment, effective June 15, 2001, inserted Subsection G and renumbered the remaining subsections accordingly.

The 1997 amendment, effective June 20, 1997, added Subsections A and M, deleted former Subsection F, which

defined "expanded practice", and redesignated the existing subsections accordingly; in Subsection J(8), inserted "and supervising" at the beginning; substituted "who is licensed" for "whose qualifications are endorsed" and "advanced" for "expanded" throughout the section, and made minor stylistic changes.

The 1993 amendment, effective June 18, 1993, added "As used in the Nursing Practice Act" at the beginning; inserted current Subsection E and redesignated former Subsections E through K as Subsections F through L; and inserted "or any other state in the United States" in Paragraph (5) of Subsection J.

ANNOTATIONS

Additional midwife license not required. — A family nurse practitioner authorized by the board of nursing to perform services constituting midwifery need not, as well, have a midwife license from the health services division (now department of health). 1981 Op. Att'y Gen. No. 81-07.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 7.

Nurse as physician within rule as to privileged communications, 68 A.L.R. 177.

Nurse's liability for her own negligence or malpractice, 51 A.L.R.2d 970.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 5.

61-3-4. Criminal offender's character evaluation.

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Nursing Practice Act.

History: 1953 Comp., § 67-2-3.1, enacted by Laws 1974, ch. 78, § 12.

Cross references. — For criminal records screening for caregivers employed by care providers, see 29-17-2 NMSA 1978 et seq.

61-3-5. License required.

A. Except as otherwise provided in the Nursing Practice Act, no person shall use the title "nurse" unless the person is licensed or has been licensed in the past as a registered nurse or licensed practical nurse under the Nursing Practice Act.

B. Except as otherwise provided in the Nursing Practice Act, unless licensed as a registered nurse under the Nursing Practice Act, no person shall:

(1) practice professional nursing;

(2) use the title "registered nurse", "professional nurse", "professional registered nurse" or the abbreviation "R.N." or any other abbreviation thereof or use any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a registered nurse; or

(3) engage in a nursing specialty as defined by the board.

C. Except as otherwise provided in the Nursing Practice Act, unless licensed as a licensed practical nurse under the Nursing Practice Act, no person shall:

(1) practice licensed practical nursing; or

(2) use the title "licensed practical nurse" or the abbreviation "L.P.N." or any other abbreviation thereof or use any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a licensed practical nurse.

D. Unless licensed as a certified nurse practitioner under the Nursing Practice Act, no person shall:

(1) practice as a certified nurse practitioner; or

(2) use the title "certified nurse practitioner" or the abbreviations "C.N.P." or "N.P." or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified nurse practitioner.

E. Unless licensed as a certified registered nurse anesthetist under the Nursing Practice Act, no person shall:

(1) practice as a nurse anesthetist; or

(2) use the title "certified registered nurse anesthetist" or the abbreviation "C.R.N.A." or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified registered nurse anesthetist.

F. Unless licensed as a clinical nurse specialist under the Nursing Practice Act, no person shall:

(1) practice as a clinical nurse specialist; or

(2) use the title "clinical nurse specialist" or the abbreviation "C.N.S." or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a clinical nurse specialist.

G. No licensed nurse shall be prohibited from identifying himself or his licensure status.

History: 1953 Comp., § 67-2-4, enacted by Laws 1968, ch. 44, § 4; 1977, ch. 220, § 2; 1985, ch. 67, § 2; 1991, ch. 190, § 3; 1997, ch. 244, § 4; 2001, ch. 137, § 3; 2003, ch. 307, § 6.

The 2003 amendment, effective January 1, 2004, added "Except as otherwise provided in the Nursing Practice Act," at the beginning of Subsections A, B and C.

The 2001 amendment, effective June 15, 2001, inserted Subsection A and renumbered the remaining subsections accordingly.

The 1997 amendment, effective June 20, 1997, added Subsection F, inserted "or imply" near the end of Subsections A(2) and B(2), substituted "licensed" for "endorsed" throughout the section, and made minor stylistic changes.

The 1991 amendment, effective June 14, 1991, inserted "professional registered nurse" in Paragraph

(2) of Subsection A; inserted "licensed" in Paragraph (1) of Subsection B; substituted "endorsed" for "certified" in the introductory phrases in Subsections C and D; inserted "certified" in Paragraph (1) in Subsection C; and added Subsection E.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 26.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 12.

61-3-5.1. Temporary licensure.

An applicant for nurse licensure pursuant to the Nursing Practice Act may be issued a temporary license for a period not to exceed six months or for a period of time necessary for the board to ensure that the applicant has met the licensure requirements set out in that act, whichever is less.

History: Laws 2001, ch. 137, § 14.

61-3-6. Administration of anesthetics.

It is unlawful for any person, other than a person licensed in New Mexico to practice medicine, osteopathy or dentistry or a currently licensed certified registered nurse anesthetist, to administer anesthetics to any person. Nothing in this section prohibits a person currently licensed pursuant to the Nursing Practice Act from using hypnosis or from administering local anesthetics or moderate sedation.

History: 1953 Comp., § 67-2-4.1, enacted by Laws 1973, ch. 149, § 2; 1979, ch. 379, § 2; 1985, ch. 67, § 3; 1991, ch. 190, § 4; 1997, ch. 244, § 5; 2005, ch. 307, § 2.

The 2005 amendment, effective April 7, 2005, changed "conscious sedation" to "moderate sedation".

The 1997 amendment, effective June 20, 1997, inserted "licensed" near the end of the first sentence, and in the last sentence substituted "licensed pursuant to the Nursing Practice Act from using hypnosis or from administering local anesthetics or conscious sedation" for "licensed in the healing arts from administering local anesthetics or from using hypnosis".

The 1991 amendment, effective June 14, 1991, substituted "anesthetics" for "anesthesia exceptions" in the catchline and for "anesthesia" in the second sentence, and, in the first sentence, substituted "to administer anesthetics" for "when acting under the direction of and in the immediate area of a licensed physician, or dentist, to administer anesthesia".

ANNOTATIONS

Nursing license required. — The board of nursing may not license a person as an anesthetist if that person

is not a registered nurse or a licensed practical nurse in the state of New Mexico. 1973 Op. Att'y Gen. No. 73-62.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Nurse's liability for her own negligence or malpractice, 51 A.L.R.2d 970.

Malpractice: duty and liability of anesthetist, 53 A.L.R.2d 142, 49 A.L.R.4th 63.

Liability of operating surgeon for negligence of nurse assisting him, 12 A.L.R.3d 1017.

Liability of hospital for negligence of nurse assisting operating surgeon, 29 A.L.R.3d 1065.

Medical malpractice: who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice, 12 A.L.R.5th 1.

61-3-7. Repealed.

Repeals. — Laws 1979, ch. 379, § 12 repealed 61-3-7 NMSA 1978, as enacted by Laws 1973, ch. 149, § 3, exempting persons employed to administer general

anesthesia on the effective date of the act from the provisions of the act, effective April 6, 1979.

61-3-8. Board created; members; qualifications; terms; vacancies; removal.

A. There is created a seven-member "board of nursing". The board shall consist of four licensed nurses, one preferably a licensed practical nurse, and three members who shall represent the public and shall not have been licensed as registered or licensed practical nurses, nor shall the public members have any significant financial interest, direct or indirect, in the profession regulated. Not more than two board members shall be appointed from any one county, and not more than two registered nurse members shall be from any one field of nursing. Members of the board shall be appointed by the governor for staggered terms of four years each. Nurse members shall be appointed from lists submitted to the governor by any generally recognized organization of nurses in this state. Appointments shall be made in such manner that the terms of no more than two board members expire on July 1 of each year. Vacancies shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy. Board members shall serve until their successors have been appointed and qualified.

B. Members of the board shall be citizens of the United States and residents of this state. Registered nurse members shall be licensed in this state, shall have had, since graduation, at least five years' experience in nursing, shall be currently engaged in professional nursing and shall have been actively engaged in professional nursing for at least three years immediately preceding appointment or reappointment. The licensed practical nurse member shall be licensed in this state, shall have been graduated from an approved licensed practical nursing education program, shall have been licensed by examination, shall have had at least five years' experience since graduation, shall be currently engaged in licensed practical nursing and shall have been actively engaged in licensed practical nursing for at least three years immediately preceding appointment or reappointment.

C. No board member shall serve more than two full or partial terms, consecutive or otherwise.

D. Any board member failing to attend seventy percent of meeting days annually, either regular or special, shall automatically be removed as a member of the board.

E. The governor may remove any member from the board for neglect of any duty required by law, for incompetency or for unprofessional or dishonorable conduct, in accordance with regulations prescribed by the board.

F. In the event of a vacancy on the board for any reason, the secretary of the board shall immediately notify the governor, the board members and any generally recognized nursing organization

of the vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member.

History: 1953 Comp., § 67-2-5, enacted by Laws 1968, ch. 44, § 5; 1977, ch. 220, § 3; 1979, ch. 379, § 3; 1991, ch. 189, § 3; 1991, ch. 190, § 5.

The 1991 amendment, effective June 14, 1991, in Subsection A, rewrote the second sentence which read "The board shall consist of four registered nurses, two licensed practical nurses and one member who shall represent the public and shall not have been licensed as a registered or practical nurse, nor shall such public member have any significant financial interest, direct or indirect, in the occupation regulated"; deleted the former fourth sentence, relating to members of the board holding office on the effective date of the act; deleted "The nurse" at the beginning and substituted "four years" for "three years" in the present fourth sentence; added "Nurse members shall be appointed" at the beginning of the fifth sentence; rewrote the sixth sentence which read "Appointments shall be made in such manner that the terms of three board members expire on July 1 of one year, the terms of three board members expire on July 1 of the next year, and the terms of two board members expire on July 1 of the succeeding year"; and made related

and minor stylistic changes in Subsection A; substituted "seventy percent of meeting days annually" for "three consecutive meetings" in Subsection D; and made related and minor stylistic changes in Subsections B and F. Identical amendments to this section were enacted by Laws 1991, ch. 189, § 3 and Laws 1991, ch. 190, § 5. The section was set out as amended by Laws 1991, ch. 190, § 5. See 12-1-8 NMSA 1978.

ANNOTATIONS

Number of terms. — For purposes of Subsection C of this section, the number of terms served is computed as of the time the law went into effect, that is, the appointment of the first board under the present Nursing Practice Act. 1973 Op. Att'y Gen. No. 73-24.

A board member who had served one full term under the present Nursing Practice Act, as well as a partial term prior to the time that the act went into effect, could be reappointed for a term of office. 1973 Op. Att'y Gen. No. 73-24.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

61-3-9. Board meetings; quorum; officers.

A. The board shall annually elect a chairman, vice chairman and secretary from its entire membership.

B. The board shall meet at least once every three months. Special meetings may be called by the chairman and shall be called upon the written request of three or more members of the board. Notification of special meetings shall be made by certified mail unless such notice is waived by the entire board and noted in the minutes. Notice of all regular meetings shall be made by regular mail at least ten days prior to the meeting, and copies of the minutes of all meetings shall be mailed to each board member within thirty days after any meeting.

C. A majority of the board, including at least one officer, constitutes a quorum.

History: 1953 Comp., § 67-2-6, enacted by Laws 1968, ch. 44, § 6; 1985, ch. 67, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

61-3-10. Powers; duties.

The board:

A. shall promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] as necessary to enable it to carry into effect the provisions of the Nursing Practice Act and to maintain high standards of practice;

B. shall prescribe standards and approve curricula for educational programs preparing persons for licensure under the Nursing Practice Act;

C. shall provide for surveys of educational programs preparing persons for licensure under the Nursing Practice Act;

D. shall grant, deny or withdraw approval from educational programs for failure to meet prescribed standards, if a majority of the board concurs in the decision;

E. shall provide for the examination, licensing and renewal of licenses of applicants;

F. shall conduct hearings upon charges relating to discipline of a licensee or nurse not licensed to practice in New Mexico who is permitted to practice professional registered nursing or licensed

practical nursing in New Mexico pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact [61-3-24.1 NMSA 1978];

G. conduct hearings upon charges related to an applicant or discipline of a licensee or the denial, suspension or revocation of a license in accordance with the procedures of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978];

H. shall cause the prosecution of persons violating the Nursing Practice Act and have the power to incur such expense as is necessary for the prosecution;

I. shall keep a record of all proceedings;

J. shall make an annual report to the governor;

K. shall appoint and employ a qualified registered nurse, who shall not be a member of the board, to serve as executive officer to the board, and the board shall define the duties and responsibilities of the executive officer except that the power to grant, deny or withdraw approval for schools of nursing or to revoke, suspend or withhold a license authorized by the Nursing Practice Act shall not be delegated by the board;

L. shall provide for such qualified assistants as may be necessary to carry out the provisions of the Nursing Practice Act. Such employees shall be paid a salary commensurate with their duties;

M. shall, for the purpose of protecting the health and well-being of residents of New Mexico and promoting current nursing knowledge and practice, promulgate rules establishing continuing education requirements as a condition of license renewal and shall study methods of monitoring continuing competence;

N. may appoint advisory committees consisting of at least one member who is a board member and at least two members who are expert in the pertinent field of health care to assist it in the performance of its duties. Committee members may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978];

O. may promulgate rules designed to maintain an inactive status listing for registered nurses and licensed practical nurses;

P. may promulgate rules to regulate the advanced practice of professional registered nursing and expanded practice of licensed practical nursing;

Q. shall license qualified certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;

R. shall register nurses not licensed to practice in New Mexico who are permitted to practice professional registered nursing or licensed practical nursing in New Mexico pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact;

S. shall promulgate rules establishing standards for authorizing prescriptive authority to certified nurse practitioners, clinical nurse specialists and certified registered nurse anesthetists; and

T. shall determine by rule the states and territories of the United States or the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of unapproved and approved licensing jurisdictions on the board's website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: 1953 Comp., § 87-2-7, enacted by Laws 1968, ch. 44, § 7; 1977, ch. 220, § 4; 1991, ch. 190, § 6; 1997, ch. 244, § 6; 2003, ch. 276, § 4; 2003, ch. 307, § 7; 2022, ch. 39, § 14.

The 2022 amendment, effective May 18, 2022, provided that the board of nursing is subject to the provisions of the State Rules Act for promulgating rules and to the Uniform Licensing Act for licensing and disciplinary matters, required the board of nursing to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to

review the lists annually to determine if amendments to the rule are needed; in Subsection A, after "shall", deleted "adopt and revise such" and added "promulgate", and after "rules", deleted "and regulations" and added "in accordance with the State Rules Act"; redesignated former Subsections G through R as Subsections H through S, respectively; in Subsection G, added "conduct hearings upon charges related to an applicant or discipline of a licensee"; in Subsection H, after "prosecution of", deleted "all", after "persons", deleted "including firms, associations, institutions and corporations", and after "is necessary", deleted "therefor" and added "for the prosecution"; and added Subsection T.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or

different expedited licensure shall have rules in place and operational by January 1, 2023.

2003 Multiple Amendments. — Laws 2003, ch. 276, § 4 and Laws 2003, ch. 307, § 7 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2009, ch. 307, § 7, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2003, ch. 276, § 4 and Laws 2003, ch. 307, § 7 are described below. To view the session laws in their entirety, see the 2003 session laws on *NMOneSource.com*.

Laws 2003, ch. 307, § 7, effective January 1, 2004, substituted "if" for "provided that" following "prescribed standards" near the end of Subsection D; inserted "or nurse not licensed to practice in New Mexico who is permitted to practice professional registered nursing or licensed practical nursing in New Mexico pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact" following "discipline of a licensee" near the middle of Subsection F; and added a new Subsection Q and redesignated former Subsection Q as Subsection R.

Laws 2003, ch. 276, § 4, effective June 20, 2003, at the end of Subsection Q inserted "and certified registered nurse anesthetists".

The 1997 amendment, effective June 20, 1997, substituted "who" for "and" preceding "shall define" in Subsection J, added "and shall study methods of monitoring continuing competence" at the end of Subsection L, substituted "license qualified" for "endorse the qualifications of" at the beginning of Subsection P, and added Subsection Q.

The 1991 amendment, effective June 14, 1991, substituted "educational" for "education" in Subsections D and L; substituted "at least one member who is a board member and at least two members" for "at least three members" in Subsection M; added Subsections O and P; and made a minor stylistic change in Subsection J and a related stylistic change in Subsection M.

ANNOTATIONS

Duplicate certificate. — The board could establish regulations for issuing a duplicate certificate, but no fee could be charged therefor. 1966 Op. Att'y Gen. No. 66-99.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 22 to 24.

61-3-10.1. Hemodialysis technicians; training programs; certification.

A. A statewide program for certification of hemodialysis technicians is created according to the rules adopted by the board.

B. Unless certified as a certified hemodialysis technician pursuant to the Nursing Practice Act, no person shall:

- (1) practice as a certified hemodialysis technician; or
- (2) use the title "certified hemodialysis technician", "hemodialysis technician" or other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified hemodialysis technician.

C. The board shall:

- (1) maintain a permanent register of all certified hemodialysis technicians;
- (2) adopt rules for certified hemodialysis technician training programs, including standards and curricula;
- (3) provide for periodic evaluation of training programs at least every two years;
- (4) grant, deny or withdraw approval from a training program that fails to meet prescribed standards or fails to maintain a current contract with the board; and
- (5) conduct disciplinary hearings of certified hemodialysis technicians or on the denial, suspension or revocation of certified hemodialysis technician certificates in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

D. Except as provided in Section 61-1-34 NMSA 1978, every applicant for certification as a certified hemodialysis technician shall pay the required application fee, submit written evidence of having completed a board-approved training program for hemodialysis technicians and successfully complete a board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

E. Every certificate issued by the board to practice as a certified hemodialysis technician shall be renewed every two years. The certified hemodialysis technician seeking renewal shall submit proof of employment as a certified hemodialysis technician and proof of having met continuing education requirements adopted by the board.

F. The board shall set the following nonrefundable fees:

- (1) for initial certification by initial or subsequent examination, a fee not to exceed sixty dollars (\$60.00);
- (2) for renewal of certification, a fee not to exceed sixty dollars (\$60.00);
- (3) for reactivation of a lapsed certificate after failure to renew a certificate or following board action, a fee not to exceed sixty dollars (\$60.00);

(4) for initial review and approval of a training program, a fee not to exceed three hundred dollars (\$300);

(5) for subsequent review and approval of a training program that has changed, a fee not to exceed two hundred dollars (\$200);

(6) for subsequent review and approval of a training program when a change has been required by a change in board policy or rules, a fee not to exceed fifty dollars (\$50.00); and

(7) for periodic evaluation of a training program, a fee not to exceed two hundred dollars (\$200).

History: 1978 Comp., § 61-3-10.1, enacted by Laws 1993, ch. 61, § 2; 1997, ch. 244, § 7; 2001, ch. 137, § 4; 2003, ch. 276, § 5; 2005, ch. 307, § 3; 2021, ch. 92, § 9.

Repeals and reenactments. — Laws 1993, ch. 61, § 2 repealed former 61-3-10.1 NMSA 1978, as enacted by Laws 1989, ch. 93, § 1, and enacted a new section, effective June 18, 1993.

The 2021 amendment, effective June 18, 2021, provided for the waiver of hemodialysis technician certification fees for military service members and veterans; and in Subsection D, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2005 amendment, effective April 7, 2005, changed "hemodialysis technician" to "certified hemodialysis technician"; deleted the former provisions of Subsections A(1) and (2) which defined "hemodialysis technician" and "training program"; provided in Subsection A that a statewide program for certification of hemodialysis technicians is created according to rules of the board; changed "this section" to "the Nursing Practice Act" in Subsection B; provided in Subsection C(4) that the board shall grant, deny or withdraw approval of a program that fails to maintain a current contract with the board; deleted the former provisions of Subsection C(5) which provided that the board shall withdraw approval from a program for failure to maintain a current contract with the board or for failure to pay the administrative fee as provided in the contract; provides in Subsection D that an applicant shall submit evidence of having completed a board-approved training program for hemodialysis

technicians; deleted the former provision in Subsection E which provided that certificates shall be renewed every two years by the last day of the hemodialysis technician's certification month upon payment of the required fee; provided a fee for certification by initial or subsequent examination in Subsection F(1); provided a fee for reactivation of a lapsed certificate or following board action in Subsection F(3); increased the fee in Subsection F(3) from \$30 to \$60; increased the fee in Subsection F(5) from \$100 to \$200; increased the fee in Subsection F(7) from \$150 to \$200; and deleted former Subsection G which provided that training programs shall pay the board for administrative and other costs associated with oversight of the program.

The 2003 amendment, effective June 20, 2003, added Paragraph C(5) and redesignated former Paragraph C(5) as (6).

The 2001 amendment, effective June 15, 2001, changed the renewal month of a hemodialysis technician's certificate from the technician's birth month to his certification month in Subsection E; in Subsection F, inserted "by rule" in the introductory language, increased the fee in Paragraph (4) from \$150 to \$300, increased the fee in Paragraph (5) from \$50 to \$100, increased the fee in Paragraph (6) from \$25 to \$50, increased the fee in Paragraph (7) from \$75 to \$150; and added Subsection G.

The 1997 amendment, effective June 20, 1997, substituted "every two years by the last day of the hemodialysis technician's birth month" for "biennially" at the beginning of Subsection E.

61-3-10.2. Medication aides.

A. A statewide program for certification of medication aides and approval of medication aide training programs is created under the board.

B. Unless certified as a certified medication aide under the Nursing Practice Act, no person shall:

(1) practice as a certified medication aide; or

(2) use the titles "certified medication aide" or "medication aide" or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified medication aide.

C. The board shall:

(1) maintain a permanent register of all persons certified to practice as a certified medication aide;

(2) adopt rules for certified medication aide education and certification, including standards and curricula;

(3) adopt rules governing the supervision of certified medication aides by licensed nurses, including standards and performance evaluations of certified medication aides;

(4) conduct disciplinary hearings of certified medication aides or on the denial, suspension or revocation of certified medication aide certificates in accordance with the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978]; and

(5) grant approval to a certified medication aide training program that meets all the requirements set by the board and deny or withdraw approval from medication aide training programs that fail to meet prescribed standards or fail to maintain a current contract.

D. Except as provided in Section 61-1-34 NMSA 1978, every applicant for certification as a certified medication aide shall pay the required application fee, submit written evidence of having completed a board-approved training program for certified medication aides and successfully complete a board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

E. Every certificate issued by the board to practice as a certified medication aide shall be renewed every two years. The certified medication aide seeking renewal shall submit proof of employment as a certified medication aide and proof of having met continuing education requirements adopted by the board.

F. The board shall set the following nonrefundable fees:

- (1) for initial certification by initial or subsequent examination, a fee not to exceed sixty dollars (\$60.00);
- (2) for renewal of certification, a fee not to exceed sixty dollars (\$60.00);
- (3) for reactivation of a lapsed certificate after failure to renew a certificate or following board action, a fee not to exceed sixty dollars (\$60.00);
- (4) for initial review and approval of a training program, a fee not to exceed three hundred dollars (\$300);
- (5) for subsequent review and approval of a training program that has changed, a fee not to exceed two hundred dollars (\$200);
- (6) for subsequent review and approval of a training program when a change has been required by a change in board policy or rules, a fee not to exceed fifty dollars (\$50.00); and
- (7) for periodic evaluation of a training program, a fee not to exceed two hundred dollars (\$200).

History: 1978 Comp., § 61-3-10.2, enacted by Laws 1991, ch. 209, § 1; 1993, ch. 138, § 1; 1995, ch. 118, § 1; 1997, ch. 244, § 8; 2001, ch. 137, § 5; 2003, ch. 276, § 6; 2005, ch. 303, § 1; 2005, ch. 307, § 4; 2021, ch. 92, § 10.

The 2021 amendment, effective June 18, 2021, provided for the waiver of medication aide certification fees for military service members and veterans; and in Subsection D, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2005 amendment, effective April 7, 2005, amended Subsection A that limited the licensing of medication aids to licensed intermediate care facilities for the mentally retarded; deleted Subsection B that provided a definition of "medication aide", relettered former Subsections B, C and D as Subsections C, D and E; amended Subsection B to insert "certified" before "medication aide" in two places; amended Subsection C to insert "certified" before "medication aide" and deleted Subsection C(3) and added Subsection B(5) relating to withdrawal or denial of certification of medication aide training programs that fail to meet standards; deleted former Subsections F, H and I; and added a new Subsection F providing for fees.

Laws 2005, ch. 303, § 1 and Laws 2005, ch. 307, § 4 both enacted amendments to 61-3-10.2 NMSA 1978. The section was set out as amended by Laws 2005, ch. 307, § 4. See 12-1-8 NMSA 1978.

The 2003 amendment, effective June 20, 2003, added Paragraph D(3) and redesignated former Paragraphs D(3) and (4) as Paragraphs D(4) and (5).

The 2001 amendment, effective June 15, 2001, in Paragraph I(2), increased the review fees from \$150 to \$300 for each initial review or approval, and from \$50 to \$100 for each subsequent review or approval, and deleted the

exception at the end of the paragraph, which read "except where the change or modification has been required by a change in board policy or board rules and regulations, in which case the fee for each review and approval shall not exceed twenty-five dollars (\$25.00)"; and in Paragraph I(3), increased the educational review fee from \$75 to \$150.

The 1997 amendment, effective on June 20, 1997, substituted "every two years by the last day of the medication aide's birth month and" for "biennially" in the first sentence of Subsection G.

The 1995 amendment, effective July 1, 1995, in Subsection A, deleted "trial" following "purpose of the" in the second sentence, deleted the former third sentence requiring a report to the forty-second legislature and substituted "continuing" for "initiating" in the last sentence; substituted "supervision of a licensed nurse" for "direction of a registered nurse" in Subsection B; in Subsection D, added Paragraph (3), redesignated former Paragraph (3) as Paragraph (4) and made a minor stylistic change in Paragraph (2).

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "shall permit the operation of a" for "is enacted to permit the initiation and operation of a two-year" in the first sentence, added the present second sentence and deleted "at the end of the second full year of implementation" following "evaluated" and substituted "and the necessity of continuing" for "of" and "second session of the forty-second legislature" for "first session of the forty-first legislature" in the present third sentence; in Subsection B, added "For the purposes of this section" to the beginning and substituted "registered" for "licensed"; and in Subsection C, deleted "certified" preceding "medication".

61-3-10.3. Repealed.

Repeals. — Laws 2005, ch. 307 § 10 repealed 61-3-10.3 NMSA 1978, as enacted by Laws 1995, ch. 117, § 1, relating to medication aides, effective April 7, 2005. For

provisions of former section, see the 2004 NMSA 1978 on NMSOneSource.com.

61-3-10.4. Repealed.

Repeals. — Laws 2005, ch. 307 § 10 repealed 61-3-10.4 NMSA 1978, as enacted by Laws 2003, ch. 282, § 2, relating to school medication aides training pilot program,

effective April 7, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

61-3-10.5. Nursing excellence program; license renewal surcharge.

A. The board may establish a "nursing excellence program" that provides strategies to:

(1) enhance recruitment and retention of professional nurses, increase career and educational opportunities and improve interaction with health facilities administrations, the medical profession and institutions of higher education; and

(2) fund loan repayment assistance pursuant to Section 2 of this 2017 act [21-22D-11 NMSA 1978].

B. The board may impose a license renewal surcharge for each nursing license renewed in an amount not to exceed twenty dollars (\$20.00) to implement and maintain the nursing excellence program. The surcharge shall be used as follows:

(1) fifty percent of each license renewal surcharge shall be deposited in the nursing excellence fund to be used by the board to carry out the provisions of Paragraph (1) of Subsection A of this section; and

(2) fifty percent of each license renewal surcharge shall be appropriated to the higher education department in accordance with the provisions of Section 2 of this 2017 act to fund loan repayment assistance for nurses in advanced practice who practice in areas of New Mexico that the higher education department has designated as underserved.

C. The board shall transfer the portion of the license renewal surcharge to be appropriated to the higher education department in accordance with the provisions of Paragraph (2) of Subsection B of this section by July 1, 2018 and by each July 1 thereafter.

History: Laws 2003, ch. 276, § 2; 2017, ch. 91, § 3.

The 2017 amendment, effective July 1, 2017, provided loan repayment assistance through nursing license renewal surcharge fees for nurses in advance practice who practice in areas of New Mexico that the higher education department has designated as underserved; in Subsection

A, added paragraph designation "(1)", at the end of the paragraph, added "and", and added Paragraph A(2); in Subsection B, in the second sentence, added "surcharge shall be used as follows", and added Paragraphs B(1) and B(2); and added Subsection C.

61-3-10.6. Nursing excellence fund created.

The "nursing excellence fund" is created in the state treasury to support the nursing excellence program. The fund consists of license renewal surcharges, appropriations, gifts, grants, donations and income from investment of the fund. Any income earned on investment of the fund shall remain in the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the board and money in the fund is appropriated to the board to carry out the purposes of the nursing excellence program. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the chairman of the board or his authorized representative.

History: Laws 2003, ch. 276, § 3.

Effective dates. — Laws 2003, ch. 276 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

61-3-11. Bonds; expenses.

A. The executive officer and any employee of the board who handles money or who certifies the receipt or disbursement of money received by the board, shall, within thirty days after election or employment by the board, execute a bond in a penal sum to be set by the board, conditioned on the faithful performance of the duties of the office and on accounting for all funds coming into his

hands. The bonds shall be signed by a surety company authorized to do business in this state and shall be in such form as to meet the approval of the board.

B. Members of the board may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

History: 1953 Comp., § 67-2-8, enacted by Laws 1968, ch. 44, § 8.

61-3-12. Examination; notice to applicants.

The board shall provide for the examination of all applicants seeking licensure under the provisions of the Nursing Practice Act.

History: 1953 Comp., § 67-2-9, enacted by Laws 1968, ch. 44, § 9; 1975, ch. 40, § 1; 1979, ch. 379, § 4; 1993, ch. 61, § 3.

The 1993 amendment, effective June 18, 1993, deleted "At least twice a year" at the beginning of the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

61-3-13. Qualifications for licensure as a registered nurse.

Before being considered for licensure as a registered nurse, either by endorsement or examination, under Section 61-3-14 NMSA 1978, an applicant shall:

A. furnish evidence satisfactory to the board that the applicant has successfully completed an approved program of nursing for licensure as a registered nurse and has graduated or is eligible for graduation; and

B. at the cost to the applicant, provide the board with fingerprints and other information necessary for a state and national criminal background check.

History: 1953 Comp., § 67-2-10, enacted by Laws 1968, ch. 44, § 10; 1977, ch. 220, § 5; 1979, ch. 379, § 5; 1991, ch. 190, § 7; 1997, ch. 244, § 10; 2001, ch. 137, § 6.

The 2001 amendment, effective June 15, 2001, added the Subsection A designation and added Subsection B.

The 1997 amendment, effective June 20, 1997, substituted "applicant has successfully completed an approved program of nursing for licensure as a registered nurse and has graduated or is eligible for graduation" for former language relating to an approved high school course or the

equivalent and completion and graduation from an approved school of nursing.

The 1991 amendment, effective June 14, 1991, deleted "four-year" preceding "high school" and made a minor stylistic change in Subsection A.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 62. 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

61-3-14. Licensure of registered nurses; by examination; expedited licensure.

A. Applicants for licensure by examination shall be required to pass the national licensing examination for registered nurses. The applicant who successfully passes the examination may be issued by the board a license to practice as a registered nurse.

B. The board shall issue an expedited license to practice professional registered nursing without an examination to an applicant who has been duly licensed in another licensing jurisdiction and holds a valid, unrestricted license and is in good standing with the licensing board in that licensing jurisdiction. The board shall expedite the issuance of a license in accordance with Section 61-1-31.1 NMSA 1978 within thirty days. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal.

C. An applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English.

History: 1953 Comp., § 67-2-11, enacted by Laws 1968, ch. 44, § 11; 1977, ch. 220, § 6; 1979, ch. 379, § 6; 1982, ch. 108, § 1; 1991, ch. 190, § 8; 2014, ch. 3, § 1; 2022, ch. 39, § 15.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of nursing shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978, and provided that if the board of nursing issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal; in the section heading, added "by examination"; in Subsection B, after "The board", deleted "may" and added "shall", deleted "by taking the national licensing examination for registered nurses under the laws of another state if the applicant meets the qualifications required of registered nurses in this state. From July 1, 2014 through June 30, 2019, upon a determination by the board that an application is complete and approved" and added "in another licensing jurisdiction and holds a valid, unrestricted license and is in good standing with the licensing board in that licensing jurisdiction", and after "expedite the issuance of a license", deleted "pursuant to this subsection within five business days" and added the remainder of the subsection; and in Subsection C, deleted "The board may issue a license to practice as a registered nurse to", after "a territory or foreign country", deleted "if the applicant meets the qualifications required of registered nurses in this state, is proficient" and added "shall demonstrate

proficiency", and after "English", deleted "and passes the national licensing examination for registered nurses".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2014 amendment, effective July 1, 2014, provided for the expedited licensure for nurses licensed in other states; in the catchline, added "expedited licensure"; in Subsection B, in the first sentence, after "license to practice", deleted "as a" and added "professional" and after "professional registered", changed "nurse" to "nursing", and added the second sentence.

The 1991 amendment, effective June 14, 1991, inserted "is proficient in English" and made a minor stylistic change in Subsection C.

ANNOTATIONS

Successful passing of examination prerequisite for license. — The qualifications referred to in Subsection B clearly include the successful passing of the test pool examination or the equivalent; if the applicant's examination or mark elsewhere do not meet the equivalent standards in New Mexico, the application for licensure should be denied and the applicant required to qualify by examination. 1968 Op. Att'y Gen. No. 68-112.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

61-3-15. Repealed.

Repeals. — Laws 2001, ch. 137, § 15 repealed 61-3-15 NMSA 1978, as enacted by Laws 1968, ch. 44, § 12, regarding temporary licensure for registered nurses,

effective June 15, 2001. For provisions of former section, see the 2000 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 61-3-5.1 NMSA 1978.

61-3-16. Fees for licensure as a registered nurse.

Except as provided in Section 61-1-34 NMSA 1978, an applicant for licensure as a registered nurse shall pay the following nonrefundable fees:

- A. for licensure without examination, a fee not to exceed one hundred fifty dollars (\$150);
- B. for licensure by examination when the examination is the first for the applicant in this state, a fee not to exceed one hundred fifty dollars (\$150);
- C. for licensure by examination when the examination is other than the first examination, a fee not to exceed sixty dollars (\$60.00); and
- D. for initial licensure as a certified nurse practitioner, certified registered nurse anesthetist or clinical nurse specialist, a fee not to exceed one hundred dollars (\$100). This fee shall be in addition to the fee paid for registered nurse licensure.

History: 1953 Comp., § 67-2-13, enacted by Laws 1968, ch. 44, § 13; 1977, ch. 220, § 8; 1982, ch. 108, § 2; 1991, ch. 190, § 9; 1997, ch. 244, § 11; 2005, ch. 307, § 5; 2020, ch. 6, § 8.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in the introductory clause, deleted "Applicants" and added "Except as provided in Section 61-1-34 NMSA 1978, an applicant".

The 2005 amendment, effective April 7, 2005, changed the fee in Subsection D from \$50 to \$100.

The 1997 amendment, effective June 20, 1997, substituted "licensure" for "endorsement" in Subsection D.

The 1991 amendment, effective June 14, 1991, substituted "one hundred fifty dollars (\$150)" for "seventy-five dollars (\$75.00)" in Subsections A and B; substituted "sixty dollars (\$60.00)" for "thirty dollars (\$30.00) for each section taken" in Subsection C; and added Subsection D.

61-3-17. Registration under previous law.

Any person licensed as a professional or registered nurse under any prior laws of this state, whose license is valid on the effective date of the Nursing Practice Act, shall be held to be licensed as a registered nurse under the provisions of the Nursing Practice Act and shall be entitled to renewal of this license as provided in the Nursing Practice Act.

History: 1953 Comp., § 67-2-14, enacted by Laws 1968, ch. 44, § 14; 1977, ch. 220, § 9.

Compiler's notes. — The "effective date of the Nursing Practice Act", referred to in this section, is July 1, 1968, which is the effective date of Laws 1968, ch. 44, § 28.

61-3-18. Qualifications for licensure as a licensed practical nurse.

Before being considered for licensure as a licensed practical nurse, either by endorsement or examination, under Section 61-3-19 NMSA 1978, an applicant shall:

A. furnish evidence satisfactory to the board that the applicant has successfully completed an approved program of nursing for licensure as a licensed practical nurse or registered nurse and has graduated or is eligible for graduation; and

B. at the cost to the applicant, provide the board with fingerprints and other information necessary for a state and national criminal background check.

History: 1953 Comp., § 67-2-15, enacted by Laws 1968, ch. 44, § 15; 1973, ch. 182, § 1; 1977, ch. 220, § 10; 1991, ch. 190, § 10; 1997, ch. 244, § 12; 2001, ch. 137, § 7; 2003, ch. 276, § 7.

The 2003 amendment, effective June 20, 2003, inserted "or registered nurse" following "licensed practical nurse" in Subsection A.

The 2001 amendment, effective June 15, 2001, added the Subsection A designation and added Subsection B.

The 1997 amendment, effective June 20, 1997, substituted "applicant has successfully completed an approved program of nursing for licensure as a licensed practical nurse and has graduated or is eligible for graduation" for former language relating to an approved high school course or the equivalent and completed a state approved course for licensed practical nurses.

The 1991 amendment, effective June 14, 1991, substituted "61-3-19 NMSA 1978" for "67-2-16 NMSA 1953" in the introductory paragraph; deleted "four-year" preceding "high school" in Subsection A; substituted "a state approved course" for "an approved course" in Subsection B; and made a minor stylistic change in Subsection A.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 62.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

61-3-19. Licensure of licensed practical nurses; by examination; by expedited licensure.

A. Applicants for licensure by examination shall be required to pass the national licensing examination for licensed practical nurses. The applicant who passes the examination may be issued by the board a license to practice as a licensed practical nurse.

B. The board shall issue an expedited license as a licensed practical nurse without an examination to an applicant who has been duly licensed in another licensing jurisdiction and holds a valid, unrestricted license and is in good standing with the licensing board in that licensing jurisdiction. The board shall expedite the issuance of a license in accordance with Section 61-1-31.1 NMSA 1978 within thirty days. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal.

C. An applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English.

History: 1953 Comp., § 67-2-16, enacted by Laws 1968, ch. 44, § 16; 1977, ch. 220, § 11; 1979, ch. 379, § 7; 1982, ch. 108, § 3; 1991, ch. 190, § 11; 1997, ch. 244, § 13; 2014, ch. 3, § 2; 2022, ch. 39, § 16.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of nursing shall expedite the issuance of licenses

in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and provided that if the board of nursing issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal; in the section heading, added "by examination"; in Subsection B, after "The board",

deleted "may" and added "shall", after "issue", added "an expedited", deleted "by passing the national licensing examinations for licensed practical nurses under the laws of another state if the applicant meets the qualifications required of licensed practical nurses in this state. From July 1, 2014 through June 30, 2019, upon a determination by the board that an application is complete and approved" and added "in another licensing jurisdiction and holds a valid, unrestricted license and is in good standing with the licensing board in that licensing jurisdiction", after "The board shall expedite the issuance of a license", deleted "pursuant to this subsection within five business days" and added the remainder of the subsection; and in Subsection C, deleted "The board may issue a license to practice as a licensed practical nurse to", after "An applicant licensed under the laws of", deleted "another" and added "a", after "foreign country", deleted "if the applicant meets the qualifications required of licensed practical nurses in this state, is proficient" and added "shall demonstrate proficiency", and after "in English", deleted "and successfully passes the national licensing examination for licensed practical nurses".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2014 amendment, effective July 1, 2014, provided for the expedited licensure for nurses licensed in other

states; in the catchline, added "expedited licensure"; in Subsection A, in the second sentence, after "who", deleted "successfully"; in Subsection B, in the first sentence, after "laws of another state", deleted "or by passing a state-board-constructed licensing examination prior to October 1986", and added the second sentence.

The 1997 amendment, effective June 20, 1997, substituted "passing" for "testing" following licensed by" and "state or by passing a state-board-constructed licensing examination prior to October 1986 if the applicant meets" for "state if the applicants meet" in Subsection B.

The 1991 amendment, effective June 14, 1991, inserted "is proficient in English" and made minor stylistic changes in Subsection C.

ANNOTATIONS

Successful passing of examination prerequisite for license. — The qualifications referred to in Subsection B clearly include the successful passing of the test pool examination or the equivalent; if the applicant's examination or mark elsewhere does not meet the equivalent standards in New Mexico, the application for licensure should be denied and the applicant required to qualify by examination. 1968 Op. Att'y Gen. No. 68-112.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

61-3-20. Repealed.

Repeals. — Laws 2001, ch. 137, § 15 repealed 61-3-20 NMSA 1978, as enacted by Laws 1968, ch. 44, § 17, regarding temporary licensure for licensed practical nurses,

effective June 15, 2001. For provisions of former section, see the 2000 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 61-3-5.1 NMSA 1978.

61-3-21. Registration under previous law.

Any person licensed as a practical nurse under any prior laws of this state whose license is valid on the effective date of the Nursing Practice Act shall be held to be licensed under the provisions of the Nursing Practice Act and shall be entitled to renewal of this license as provided in the Nursing Practice Act.

History: 1953 Comp., § 67-2-18, enacted by Laws 1968, ch. 44, § 18.

Compiler's notes. — The "effective date of the Nursing Practice Act", referred to in this section, is July 1, 1968, which is the effective date of Laws 1968, ch. 44, § 28.

61-3-22. Fees for licensure as a licensed practical nurse.

Except as provided in Section 61-1-34 NMSA 1978, an applicant for licensure as a licensed practical nurse shall pay the following nonrefundable fees:

- A. for licensure without examination, a fee not to exceed one hundred fifty dollars (\$150);
- B. for licensure by examination when the examination is the first for the applicant in this state, a fee not to exceed one hundred fifty dollars (\$150); and
- C. for licensure by examination when the examination is other than the first examination, a fee not to exceed sixty dollars (\$60.00) for each examination.

History: 1953 Comp., § 67-2-19, enacted by Laws 1968, ch. 44, § 19; 1977, ch. 220, § 13; 1991, ch. 190, § 12; 2005, ch. 307, § 6; 2020, ch. 6, § 9.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical

amendments; and in the introductory clause, deleted "Applicants" and added "Except as provided in Section 61-1-34 NMSA 1978, an applicant".

The 2005 amendment, effective April 7, 2005, changed the fee in Subsection A from \$90 to \$150; changed the fee in Subsection B from \$90 to \$150; and changed the fee in Subsection C from \$30 to \$60.

The 1991 amendment, effective June 14, 1991, substituted "ninety dollars (\$90.00)" for "forty-five dollars (\$45.00)" in Subsections A and B; substituted "by the

board not to exceed thirty dollars (\$30.00)" for "at fifteen dollars (\$15.00)" in Subsection C; and made a minor stylistic change in the introductory paragraph.

61-3-23. Permit to practice for graduate nurses.

A. The board may issue a permit to practice to an applicant upon completion of an approved course of study and upon application to take the national licensing examination after graduation within the time frame set by rules of the board.

B. The permit to practice shall be issued for practice under direct supervision at a specified place of employment in the state.

C. The permit to practice shall be valid from issuance until the results of the national licensing examination are disseminated by the board office to the examinee, at which time the permit is void and the applicant who has passed the examination may be issued a license to practice.

History: 1953 Comp., § 67-2-19.1, enacted by Laws 1977, ch. 220, § 14; 1982, ch. 108, § 4; 1993, ch. 61, § 4; 2003, ch. 276, § 8.

The 2003 amendment, effective June 20, 2003, in Subsection A, deleted "first available" following "to take the" and added "within the time frame set by rules of the board" at the end.

The 1993 amendment, effective June 18, 1993, inserted "available" near the end of Subsection A and substituted the language beginning "the examinee" for "the examinees, at which time all permits are void and those applicants who have passed the examination may be issued a license to practice" at the end of Subsection C.

61-3-23.1. Permit to practice for graduate nursing specialties.

A one-time, nonrenewable permit may be issued to graduate nurse anesthetists, nurse practitioners and clinical nurse specialists awaiting examination and results in accordance with requirements set forth by the board in the rules and regulations.

History: 1978 Comp., § 61-3-23.1, enacted by Laws 1979, ch. 379, § 8; 1991, ch. 190, § 13.

The 1991 amendment, effective June 14, 1991, substituted "nurse anesthetists, nurse practitioners and clinical

nurse specialists" for "nurse specialists" and made minor stylistic changes throughout the section.

61-3-23.2. Certified nurse practitioner; qualifications; practice; examination; endorsement; expedited licensure.

A. The board may license for advanced practice as a certified nurse practitioner an applicant who furnishes evidence satisfactory to the board that the applicant:

- (1) is a registered nurse;
- (2) has successfully completed a program for the education and preparation of nurse practitioners; provided that, if the applicant is initially licensed by the board or a board in another jurisdiction after January 1, 2001, the program shall be at the master's level or higher;
- (3) has successfully completed the national certifying examination in the applicant's specialty area; and
- (4) is certified by a national nursing organization.

B. Certified nurse practitioners may:

- (1) perform an advanced practice that is beyond the scope of practice of professional registered nursing;
- (2) practice independently and make decisions regarding health care needs of the individual, family or community and carry out health regimens, including the prescription and distribution of dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978]; and
- (3) serve as a primary acute, chronic long-term and end-of-life health care provider and as necessary collaborate with licensed medical doctors, osteopathic physicians or podiatrists.

C. Certified nurse practitioners who have fulfilled requirements for prescriptive authority may prescribe in accordance with rules, guidelines and formularies for individual certified nurse practitioners promulgated by the board.

D. Certified nurse practitioners who have fulfilled requirements for prescriptive authority may distribute to their patients dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act that have been prepared, packaged or fabricated by a registered pharmacist or doses of drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [Chapter 61, Article 11 NMSA 1978] and the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978].

E. Certified nurse practitioners licensed by the board on and after December 2, 1985 shall successfully complete a national certifying examination and shall maintain national professional certification in their specialty area. Certified nurse practitioners licensed by a board prior to December 2, 1985 are not required to sit for a national certification examination or be certified by a national organization.

F. The board shall issue an expedited license to an applicant without an examination if the person has been duly licensed as a certified nurse practitioner in another licensing jurisdiction and is in good standing with the licensing board in that licensing jurisdiction. The board shall expedite the issuance of the license in accordance with Section 61-1-31.1 NMSA 1978 within thirty days. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal. An applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English.

History: 1978 Comp., § 61-3-23.2, enacted by Laws 1991, ch. 190, § 14; 1993, ch. 61, § 5; 1997, ch. 244, § 14; 2001, ch. 137, § 8; 2014, ch. 3, § 3; 2022, ch. 39, § 17.

Cross references. — For drug prescriptive, distributing and administering authority of certified nurse midwives, see 24-1-4.1 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of nursing shall issue an expedited license to an applicant without an examination if the person has been duly licensed as a certified nurse practitioner in another licensing jurisdiction and is in good standing with the licensing board in that licensing jurisdiction, provided that the board of nursing shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if the board of nursing issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal, and provided that an applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English; and deleted former Subsection F and added a new Subsection F.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or

different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2014 amendment, effective July 1, 2014, provided for the expedited licensure for nurses licensed in other states; in the catchline, added "expedited licensure"; and added Subsection F.

The 2001 amendment, effective June 15, 2001, inserted "endorsement" in the section heading; deleted "graduate" preceding "program" in Paragraph A(2); in Subsection B, substituted "practice independently and make decisions" for "make independent decisions" in Paragraph (2) and added Paragraph (3); and in Subsection C, deleted the final sentence, which defined "prescriptive authority".

The 1997 amendment, effective June 20, 1997, added the proviso at the end of Subsection A(2), substituted "prescriptive authority" for "prescribing drugs" near the beginning of Subsection D, inserted "national professional" preceding "certification" near the end of the first sentence in Subsection E, substituted "advanced" for "expanded" and "licensed" for "endorsed" throughout the section, and made minor stylistic changes.

The 1993 amendment, effective June 18, 1993, rewrote Subsections B and C; substituted "including controlled substances included in Schedules II through V of" for "other than controlled substances as defined in" and deleted "unit" preceding "doses of drugs" in Subsection D; and deleted former Subsection F, defining "collaboration".

61-3-23.3. Certified registered nurse anesthetist; qualifications; licensure; practice; endorsement; expedited licensure.

A. The board may license for advanced practice as a certified registered nurse anesthetist an applicant who furnishes evidence satisfactory to the board that the applicant:

- (1) is a registered nurse;
- (2) has successfully completed a nurse anesthesia education program accredited by the council on accreditation of nurse anesthesia educational programs; provided that, if the applicant is initially licensed by the board or a board in another licensing jurisdiction after January 1, 2001, the program shall be at a master's level or higher; and

(3) is certified by the national board of certification and recertification for nurse anesthetists.

B. A certified registered nurse anesthetist may provide preoperative, intraoperative and post-operative anesthesia care and related services, including ordering of diagnostic tests, in accordance with the current American association of nurse anesthetists' guidelines for nurse anesthesia practice.

C. Certified registered nurse anesthetists shall function in an interdependent role as a member of a health care team in which the medical care of the patient is directed by a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978], the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] or the Podiatry Act [Chapter 61, Article 8 NMSA 1978]. The certified registered nurse anesthetist shall collaborate with the licensed physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care of the patient. As used in this subsection, "collaboration" means the process in which each health care provider contributes the health care provider's respective expertise. Collaboration includes systematic formal planning and evaluation between the health care professionals involved in the collaborative practice arrangement.

D. A certified registered nurse anesthetist who has fulfilled the requirements for prescriptive authority in the area of anesthesia practice is authorized to prescribe and administer therapeutic measures, including dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] within the emergency procedures, perioperative care or perinatal care environments. Dangerous drugs and controlled substances, pursuant to the Controlled Substances Act, that have been prepared, packaged or fabricated by a registered pharmacist or doses of drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [Chapter 61, Article 11 NMSA 1978] and the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] may be prescribed and administered.

E. A certified registered nurse anesthetist who has fulfilled the requirements for prescriptive authority in the area of anesthesia practice may prescribe in accordance with rules of the board. The board shall adopt rules concerning a prescriptive authority formulary for certified registered nurse anesthetists that shall be based on the scope of practice of certified registered nurse anesthetists. The board, in collaboration with the New Mexico medical board, shall develop the formulary. Certified registered nurse anesthetists who prescribe shall do so in accordance with the prescriptive authority formulary.

F. The board shall issue an expedited license to an applicant without an examination if the person has been duly licensed as a certified registered nurse anesthetist in another licensing jurisdiction and is in good standing with the licensing board in that licensing jurisdiction. The board shall expedite the issuance of the license in accordance with Section 61-1-31.1 NMSA 1978 within thirty days. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal. An applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English.

G. A health care facility may adopt policies relating to the providing of anesthesia care.

H. A certified registered nurse anesthetist licensed by the board shall maintain this certification with the national board of certification and recertification for nurse anesthetists.

History: 1978 Comp., § 61-3-23.3, enacted by Laws 1991, ch. 190, § 15; 1997, ch. 244, § 15; 2001, ch. 137, § 9; 2014, ch. 3, § 4; 2022, ch. 39, § 18.

Cross references. — For the New Mexico medical board, see 61-6-2 NMSA 1978 et seq.

For the Anesthesiologist Assistants Act, see 61-6-10.1 NMSA 1978 et seq.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of nursing shall issue an expedited license to an applicant without an examination if the person has been duly licensed as a certified registered nurse anesthetist in another licensing jurisdiction and is in good standing with

the licensing board in that licensing jurisdiction, provided that the board of nursing shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if the board of nursing issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal, and provided that an applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English; in Subsection A, Paragraph A(2), after "nurse anesthesia", deleted "education" and added "educational", and after "a board in another", added "licensing", and in Paragraph A(3), after

"certified by the", deleted "council on" and added "national board of"; in Subsection C, after "in New Mexico pursuant to", deleted "Chapter 61, Article 5A, 6, 8 or 10 NMSA 1978" and added "the Dental Health Care Act, the Medical Practice Act or the Podiatry Act"; in Subsection E, after "in accordance with rules", deleted "regulations and guidelines" and added "of the board"; deleted former Subsection F and added a new Subsection F; and in Subsection H, after "shall maintain this certification with the", deleted "American association of nurse anesthetists' council on" and added "national board of", and after "certification", added "and recertification for nurse anesthetists".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2014 amendment, effective July 1, 2014, provided for the expedited licensure for nurses licensed in other states; in the catchline, added "expedited licensure"; and added Subsection F.

The 2001 amendment, effective June 15, 2001, inserted "endorsement" in the section heading; in Subsection A, substituted "council on the accreditation of nurse anesthesia education programs" for "American association of nurse anesthetists' council on accreditation" in Paragraph (2) and substituted "council on certification

of nurse anesthetists" for "American association of nurse anesthetists" in Paragraph (3); inserted "including ordering of diagnostic tests" in Subsection B; rewrote Subsection C; and added Subsections D through G.

The 1997 amendment, effective June 20, 1997, substituted "licensure" for "endorsement" in the section heading, substituted "may license for advanced" for "may endorse for expanded" at the beginning of Subsection A, rewrote Paragraph A(2), substituted "Chapter 61, Article 5A" for "Chapter 60, Article 5", and made minor stylistic changes in Subsection C.

ANNOTATIONS

Interdependent relationship. — Nurse anesthetist held to be an independent contractor and not a federal employee under contract and this section which provides that the relationship between the physician and the certified registered nurse anesthetist to one that is now characterized as interdependent. *Garcia v. Reed*, 227 F. Supp. 2d 1183 (D.N.M. 2002).

Requirement on physician. — This section does not require that the physician "supervise" or be "present" during a procedure administered by the certified registered nurse anesthetist. *Garcia v. Reed*, 227 F. Supp. 2d 1183 (D.N.M. 2002).

61-3-23.4. Clinical nurse specialist; qualifications; endorsement; expedited licensure.

A. The board may license for advanced practice as a clinical nurse specialist an applicant who furnishes evidence satisfactory to the board that the applicant:

- (1) is a registered nurse;
- (2) has a master's degree or doctoral degree in a defined clinical nursing specialty;
- (3) has successfully completed a national certifying examination in the applicant's area of specialty; and
- (4) is certified by a national nursing organization.

B. Clinical nurse specialists may:

- (1) perform an advanced practice that is beyond the scope of practice of professional registered nursing;
- (2) make independent decisions in a specialized area of nursing practice using expert knowledge regarding the health care needs of the individual, family and community, collaborating as necessary with other members of the health care team when the health care need is beyond the scope of practice of the clinical nurse specialist; and
- (3) carry out therapeutic regimens in the area of specialty practice, including the prescription and distribution of dangerous drugs.

C. A clinical nurse specialist who has fulfilled the requirements for prescriptive authority in the area of specialty practice is authorized to prescribe, administer and distribute therapeutic measures, including dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] within the scope of specialty practice, including controlled substances pursuant to the Controlled Substances Act that have been prepared, packaged or fabricated by a registered pharmacist or doses of drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [Chapter 61, Article 11 NMSA 1978] and the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978].

D. Clinical nurse specialists who have fulfilled the requirements for prescriptive authority in the area of specialty practice may prescribe in accordance with rules, guidelines and formularies based on scope of practice and clinical setting for individual clinical nurse specialists promulgated by the board.

E. Clinical nurse specialists licensed by the board shall maintain certification in their specialty area.

F. The board shall issue an expedited license to an applicant without an examination if the person has been duly licensed as a clinical nurse specialist in another licensing jurisdiction and is in good standing with the licensing board in that licensing jurisdiction. The board shall expedite the issuance of the license in accordance with Section 61-1-31.1 NMSA 1978 within thirty days. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal. An applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English.

History: 1978 Comp., § 61-3-23.4, enacted by Laws 1991, ch. 190, § 16; 1997, ch. 244, § 16; 2014, ch. 3, § 5; 2022, ch. 39, § 19.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of nursing shall issue an expedited license to an applicant without an examination if the person has been duly licensed as a clinical nurse specialist in another licensing jurisdiction and is in good standing with the licensing board in that licensing jurisdiction, provided that the board of nursing shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if the board of nursing issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal, and provided that an applicant licensed under the laws of a territory or foreign country

shall demonstrate proficiency in English; and deleted former Subsection F and added a new Subsection F.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2014 amendment, effective July 1, 2014, provided for the expedited licensure for nurses licensed in other states; in the catchline, added "expedited licensure"; and added Subsection F.

The 1997 amendment, effective June 20, 1997, designated Subsection A, added Paragraph A(3) and Subsections B through E, substituted "may license for advanced practice" for "may endorse for expanded practice" at the beginning of Subsection A, and made minor stylistic changes.

61-3-23.5. Supervision of psychologist in the prescribing of psychotropic medication by nurse practitioner or clinical nurse specialist.

A. Subject to rules promulgated by the board, a nurse practitioner or clinical nurse specialist may supervise a psychologist in the prescribing of psychotropic medication pursuant to the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978].

B. No later than January 1, 2020, the board shall promulgate regulations for a nurse practitioner or clinical nurse specialist who supervises a psychologist in the prescribing of psychotropic medication pursuant to the Professional Psychologist Act.

History: Laws 2019, ch. 19, § 7.

Emergency clauses. — Laws 2019, ch. 19, § 11 contained an emergency clause and was approved February 4, 2019.

61-3-23.6. Recompiled.

Compiler's notes. — Laws 2019, ch. 129, § 1, was erroneously compiled as 61-3-23.6 NMSA 1978 and has been recompiled as 24-1-41 NMSA 1978 by the compiler.

61-3-24. Renewal of licenses.

A. Any person licensed pursuant to the provisions of the Nursing Practice Act who intends to continue practice shall renew the license every two years by the end of the applicant's renewal month and shall show proof of continuing education as required by the board except when on active military duty during a military action.

B. Upon receipt of the application and, except as provided in Section 61-1-34 NMSA 1978, a fee, in an amount not to exceed one hundred ten dollars (\$110), a license valid for two years shall be issued.

C. Upon receipt of the application and any required fee, the board shall verify the licensee's eligibility for continued licensure and issue to the applicant a renewal license for two years.

D. A person who allows a license to lapse shall be reinstated by the board on payment of any required fee for the current two years plus a reinstatement fee not to exceed two hundred dollars (\$200), provided that all other requirements are met.

History: 1953 Comp., § 67-2-20, enacted by Laws 1968, ch. 44, § 20; 1977, ch. 220, § 15; 1979, ch. 379, § 9; 1982, ch. 108, § 5; 1985, ch. 67, § 5; 1991, ch. 190, § 17; 1997, ch. 244, § 17; 2001, ch. 137, § 10; 2003, ch. 276, § 9; 2005, ch. 307, § 7; 2020, ch. 6, § 10.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection B, after "application and," added "except as provided in Section 61-1-34 NMSA 1978, a".

The 2005 amendment, effective April 7, 2005, in Subsection A, provided that a person shall show proof of continuing education as required by the board; deleted former Subsection B, which provided that before the renewal month, the board shall mail an application which shall be returned before the end of the renewal month together with proof of education and the renewal fee; in Subsection B, provided that upon receipt of the application and fee which shall not exceed \$100, a license valid for two years shall be issued; and deleted the former provision in Subsection C that renewal shall render the holder a legal practitioner of nursing for the period of the renewal license.

The 2003 amendment, effective June 20, 2003, deleted former Subsection D which read: "Applicants for renewal

who have not been actually engaged in nursing for two years or more shall furnish the board evidence of having completed refresher courses of continuing education as required by regulations adopted by the board" and redesignated former Subsection E as present Subsection D.

The 2001 amendment, effective June 15, 2001, substituted "renewal month" for "birth month" throughout the section; and substituted "two years" for "five years" in Subsection D.

The 1997 amendment, effective June 20, 1997, in Subsection A, substituted "pursuant to" for "under" following "licensed" and "every two years" for "biennially"; in Subsection C, substituted "licensee's eligibility for continued licensure" for "accuracy of the application", and "a renewal license" for "a certificate of renewal" in the first sentence and "license" for "certificate" at the end of the last sentence; and made minor stylistic changes throughout the section.

The 1991 amendment, effective June 14, 1991, added "except when on active military duty during a military action" at the end of Subsection A; substituted "one hundred dollars (\$100)" for "thirty dollars (\$30.00)" at the end of Subsection B; and, in Subsection E, substituted "two hundred dollars (\$200)" for "sixty dollars (\$60.00)" and made a minor stylistic change.

61-3-24.1. Nurse licensure compact entered into.

The Nurse Licensure Compact is entered into law and entered into with all other jurisdictions legally joining therein in a form substantially as follows:

"Nurse Licensure Compact

ARTICLE 1 – Findings and Declaration of Purpose

A. The party states find that:

(1) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

(5) the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and

(6) uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

B. The general purposes of this compact are to:

(1) facilitate the states' responsibility to protect the public's health and safety;

- (2) ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;
- (3) facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;
- (4) promote compliance with the laws governing the practice of nursing in each jurisdiction;
- (5) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
- (6) decrease redundancies in the consideration and issuance of nurse licenses; and
- (7) provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

ARTICLE 2 – Definitions

As used in this compact:

- A. "adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws that is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action;
- B. "alternative program" means a non-disciplinary monitoring program approved by a licensing board;
- C. "commission" means the Interstate Commission of Nurse Licensure Compact Administrators established in this compact;
- D. "coordinated licensure information system" means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards;
- E. "current significant investigative information" means:
 - (1) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
 - (2) investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond;
- F. "encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board;
- G. "home state" means the party state which is the nurse's primary state of residence;
- H. "licensing board" means a party state's regulatory body responsible for issuing nurse licenses;
- I. "multistate license" means a license to practice as a registered nurse or a licensed practical or vocational nurse issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege;
- J. "multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in a remote state;
- K. "nurse" means a registered nurse or licensed practical or vocational nurse, as those terms are defined by each party state's practice laws;
- L. "party state" means any state that has adopted this compact;
- M. "prior compact" means the prior nurse licensure compact that is superseded by this compact;
- N. "remote state" means a party state, other than the home state;

O. "single-state license" means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state;

P. "state" means a state, territory or possession of the United States and the District of Columbia; and

Q. "state practice laws" means a party state's laws, rules and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE 3 – General Provisions and Jurisdiction

A. A multistate license to practice registered or licensed practical or vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse or as a licensed practical or vocational nurse, under a multistate licensure privilege, in each party state.

B. A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

C. For an applicant to obtain or retain a multistate license in the home state, each party state shall require that the applicant:

(1) meets the home state's qualifications for licensure or renewal of licensure as well as all other applicable state laws;

(2) has graduated:

(a) or is eligible to graduate from a licensing board-approved registered nurse or licensed practical or vocational nurse prelicensure education program; or

(b) from a foreign registered nurse or licensed practical or vocational nurse prelicensure education program that: 1) has been approved by the authorized accrediting body in the applicable country; and 2) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

(3) has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the applicant's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing and listening;

(4) has successfully passed a national council licensure examination for registered nurses or a national council licensure examination for practical or vocational nurses given by the national council of state boards of nursing or an exam given by a recognized predecessor or successor organization, as applicable;

(5) is eligible for or holds an active, unencumbered license;

(6) has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records;

(7) has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;

(8) has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

(9) is not currently enrolled in an alternative program;

(10) is subject to self-disclosure requirements regarding current participation in an alternative program; and

(11) has a valid United States social security number.

D. All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation or any other action that affects a nurse's authorization to practice under a multistate

licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

E. A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts and the laws of the party state in which the client is located at the time service is provided.

F. Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this compact shall affect the requirements established by a party state for the issuance of a single-state license.

G. Any nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that a nurse who:

(1) changes primary state of residence after this compact's effective date must meet all applicable requirements of Subsection C of Article 3 of the Nurse Licensure Compact to obtain a multistate license from a new home state; or

(2) fails to satisfy the multistate licensure requirements in Subsection C of Article 3 of the Nurse Licensure Compact due to a disqualifying event occurring after this compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the commission.

ARTICLE 4 – Applications for Licensure in a Party State

A. Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.

B. A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

C. If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the commission.

(1) The nurse may apply for licensure in advance of a change in primary state of residence.

(2) A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

D. If a nurse changes primary state of residence by moving from a party state to a non-party state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

ARTICLE 5 – Additional Authorities Invested in Party State Licensing Boards

A. In addition to the other powers conferred by state law, a licensing board shall have the authority to:

(1) take adverse action against a nurse's multistate licensure privilege to practice within that party state; provided that:

(a) only the home state shall have the power to take adverse action against a nurse's license issued by the home state; and

(b) for purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action;

(2) issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state;

(3) complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions;

(4) issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located;

(5) obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the federal bureau of investigation for criminal background checks, receive the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions;

(6) if otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse; and

(7) take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

B. If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

C. Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

ARTICLE 6 – Coordinated Licensure Information System and Exchange of Information

A. All party states shall participate in a coordinated licensure information system of all licensed registered nurses and licensed practical or vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

B. The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this compact.

C. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials) and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

D. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

E. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

F. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

G. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

H. The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which shall include, at a minimum:

- (1) identifying information;
- (2) licensure data;
- (3) information related to alternative program participation; and
- (4) other information that may facilitate the administration of this compact, as determined by commission rules.

I. The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE 7 – Establishment of the Interstate Commission of Nurse Licensure Compact Administrators

A. The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

- (1) The commission is an instrumentality of the party states.
- (2) Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
- (3) Nothing in this compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting and Meetings

(1) Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

(2) Each administrator shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

(4) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article 8 of the Nurse Licensure Compact.

(5) The commission may convene in a closed, nonpublic meeting if the commission must discuss:

- (a) noncompliance of a party state with its obligations under this compact;

(b) the employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(c) current, threatened or reasonably anticipated litigation;

(d) negotiation of contracts for the purchase or sale of goods, services or real estate;

(e) accusing any person of a crime or formally censuring any person;

(f) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(g) disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(h) disclosure of investigatory records compiled for law enforcement purposes;

(i) disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or

(j) matters specifically exempted from disclosure by federal or state statute.

(6) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

C. The commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including but not limited to:

(1) establishing the fiscal year of the commission;

(2) providing reasonable standards and procedures:

(a) for the establishment and meetings of other committees; and

(b) governing any general or specific delegation of any authority or function of the commission;

(3) providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;

(4) establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

(5) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the commission; and

(6) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.

D. The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission.

E. The commission shall maintain its financial records in accordance with the bylaws.

F. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

G. The commission shall have the following powers:

(1) to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all party states;

(2) to bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected;

(3) to purchase and maintain insurance and bonds;

(4) to borrow, accept or contract for services of personnel, including but not limited to employees of a party state or nonprofit organizations;

(5) to cooperate with other organizations that administer state compacts related to the regulation of nursing, including but not limited to sharing administrative or staff expenses, office space or other resources;

(6) to hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters;

(7) to accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(8) to lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal or mixed; provided that at all times the commission shall avoid any appearance of impropriety;

(9) to sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real, personal or mixed;

(10) to establish a budget and make expenditures;

(11) to borrow money;

(12) to appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other such interested persons;

(13) to provide and receive information from, and to cooperate with, law enforcement agencies;

(14) to adopt and use an official seal; and

(15) to perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.

H. Financing of the Commission

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

(2) The commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.

(3) The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the party states, except by, and with the authority of, such party state.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

I. Qualified Immunity, Defense and Indemnification

(1) The administrators, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person

against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional, willful or wanton misconduct of that person.

(2) The commission shall defend any administrator, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error or omission did not result from that person's intentional, willful or wanton misconduct.

(3) The commission shall indemnify and hold harmless any administrator, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional, willful or wanton misconduct of that person.

ARTICLE 8 – Rulemaking

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this compact.

B. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

C. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(1) on the website of the commission; and

(2) on the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

D. The notice of proposed rulemaking shall include:

(1) the proposed time, date and location of the meeting in which the rule will be considered and voted upon;

(2) the text of the proposed rule or amendment, and the reason for the proposed rule;

(3) a request for comments on the proposed rule from any interested person; and

(4) the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

E. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

F. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

G. The commission shall publish the place, time and date of the scheduled public hearing.

(1) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.

(2) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

H. If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. The commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

- (1) meet an imminent threat to public health, safety or welfare;
- (2) prevent a loss of commission or party state funds; or
- (3) meet a deadline for the promulgation of an administrative rule that is required by

federal law or rule.

L. The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE 9 – Oversight, Dispute Resolution and Enforcement

A. Oversight

(1) Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.

(2) The commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission shall render a judgment or order void as to the commission, this compact or promulgated rules.

B. Default, Technical Assistance and Termination

(1) If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

(a) provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default or any other action to be taken by the commission; and

(b) provide remedial training and specific technical assistance regarding the default.

(2) If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

(4) A state whose membership in this compact has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(5) The commission shall not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated unless agreed upon in writing between the commission and the defaulting state.

(6) The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district in which the commission

has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

C. Dispute Resolution

(1) Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and non-party states.

(2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

(3) In the event the commission cannot resolve disputes among party states arising under this compact:

(a) the party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(b) the decision of a majority of the arbitrators shall be final and binding.

D. Enforcement

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(3) The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE 10 – Effective Date, Withdrawal and Amendment

A. This compact shall become effective and binding on the earlier of the date of legislative enactment of this compact into law by no less than twenty-six states or December 31, 2018. All party states to this compact that were parties to the prior compact shall be deemed to have withdrawn from the prior compact within six months after the effective date of this compact.

B. Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until such party state has withdrawn from the prior compact.

C. Any party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal shall not take effect until six months after enactment of the repealing statute.

D. A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

E. Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this compact.

F. This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

G. Representatives of non-party states to this compact shall be invited to participate in the activities of the commission, on a nonvoting basis, prior to the adoption of this compact by all states.

ARTICLE 11 – Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this

compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held to be contrary to the constitution of any party state, this compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters."

History: Laws 2003, ch. 307, § 1; repealed and re-enacted by Laws 2018, ch. 1, § 1.

Repeals and reenactments. — Laws 2018, ch. 1, § 1 repealed former 61-3-24.1 NMSA 1978, and enacted a new

section, effective January 18, 2018. For provisions of former compact, see the 2017 NMSA 1978 on *NMOneSource.com*.

61-3-24.2. Repealed.

Repeals. — Laws 2018, ch. 1, § 3 repealed 61-3-24.2 NMSA 1978, as enacted by Laws 2003, ch. 307, § 2, relating to nurse licensure compact administrator and duties,

effective January 18, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

61-3-24.3. Repealed.

Repealed. — Laws 2005, ch. 307, § 10 repealed 61-3-24.3 NMSA 1978, as enacted by Laws 2003, ch. 307, § 3, relating to multistate licensure privilege, effective April 7,

2005. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

61-3-25. Repealed.

Repeals. — Laws 1991, ch. 190, § 24 repealed 61-3-25 NMSA 1978, as enacted by Laws 1968, ch. 44, § 21, relating to licenses, effective June 14, 1991. For provisions

of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

61-3-26. Schools of nursing; standards; approval.

A. An institution desiring to conduct a nursing education program to prepare registered or licensed practical nurses shall apply to the board for approval and submit evidence that:

- (1) it is prepared to carry out a program in professional nursing education or a program in licensed practical nursing education, as the case may be; and
- (2) it is prepared to meet such standards as are established by the board.

B. A survey of the institution with which the school is to be affiliated shall be made by a member of the board or an authorized employee of the board who shall submit a written report of the survey to the board. If, in the opinion of the board, the requirements for approval are met, a certificate of approval shall be issued.

C. From time to time, as deemed necessary by the board, it is the duty of the board, through a board member or an authorized employee, to survey all schools of nursing in this state.

D. For the purpose of evaluating the educational qualifications for licensure of a candidate as either a registered or licensed practical nurse under Subsection B of either Section 61-3-13 or 61-3-18 NMSA 1978, the board shall set standards comparable to the minimum standards applicable in this state for recognition of schools of nursing in other jurisdictions.

History: 1953 Comp., § 67-2-22, enacted by Laws 1968, ch. 44, § 22; 1977, ch. 220, § 16; 1991, ch. 190, § 18.

The 1991 amendment, effective June 14, 1991, substituted "61-3-13 or 61-3-18 NMSA 1978" for "67-2-10 or 67-2-15 NMSA 1953" in Subsection D and made minor stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 C.J.S. Schools and School Districts §§ 58, 811.

61-3-27. Fund established; disposition; method of payment.

- A. There is created a "board of nursing fund".
- B. Except as provided in Sections 61-3-10.5 and 61-3-10.6 NMSA 1978, all funds received by the board and money collected under the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978] and the Lactation Care Provider Act [61-36-1 through 61-36-4 NMSA 1978] shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the board of nursing fund. Any income earned on investment of the fund shall remain in the fund.
- C. Payments out of the board of nursing fund shall be on vouchers issued and signed by the person designated by the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department.
- D. All amounts paid into the board of nursing fund shall be subject to the order of the board and shall only be used for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Nursing Practice Act and the Lactation Care Provider Act, the duties imposed by those acts and the promotion of nursing and lactation care provider education and standards in this state. All money unused at the end of the fiscal year shall remain in the board of nursing fund for use in accordance with the provisions of the Nursing Practice Act and the Lactation Care Provider Act to further the purposes of those acts.
- E. All funds that may have accumulated to the credit of the board under any previous act shall be continued for use by the board in administration of the Nursing Practice Act and the Lactation Care Provider Act.
- F. As used in this section, "lactation care provider" means a person licensed by the board pursuant to the Lactation Care Provider Act to provide lactation care and services.

History: 1953 Comp., § 67-2-23, enacted by Laws 1968, ch. 44, § 23; 1977, ch. 220, § 17; 1991, ch. 190, § 19; 2003, ch. 276, § 10; 2017, ch. 136, § 7; 2017 (1st S.S.), ch. 1, § 7.

The 2017 amendment (1st S.S.), effective May 26, 2017, made no changes.

Section 61-3-27 NMSA 1978, as amended by Laws 2017 (1st SS), ch. 1, § 7, in Subsection D, added "Paragraph (11) of Subsection C of Section 3 of this 2017 act". That language was line-item vetoed.

Compiler's notes. — Laws 2017 (1st SS), ch. 1, § 7, effective May 26, 2017, amended Laws 2017, ch. 136, § 7, which was to take effect June 16, 2017.

Laws 2017, ch. 136, § 7, provided for the board of nursing to administer funds deposited in the board of nursing fund pursuant to the Lactation Care Provider Act, and

after "Nursing Practice Act", added "and the Lactation Care Provider Act" throughout the section; in Subsection B, after "Sections", deleted "2 and 3 of this 2003 act" and added "61-3-10.5 and 61-3-10.6 NMSA 1978"; in Subsection D, after "promotion of nursing", added "and lactation care provider"; and added Subsection F.

The 2003 amendment, effective June 20, 2003, in Subsection B, added "Except as provided in Sections 2 and 3 of this 2003 act" at the beginning, and substituted "income earned on investment of the fund shall remain in" for "interest earned on the fund shall be credited to" near the end.

The 1991 amendment, effective June 14, 1991, added the third sentence in Subsection B and made minor stylistic changes throughout the section.

61-3-27.1. Board of nursing fund; authorized use.

Pursuant to Subsection D of Section 61-3-27 NMSA 1978, the board shall authorize expenditures from unexpended and unencumbered cash balances in the board of nursing fund to support an information technology project manager to develop, implement and maintain a web site portal for licensure and a central database for credentialing of health care providers.

History: 1978 Comp., § 61-3-27.1, enacted by Laws 2003, ch. 235, § 5.

Effective dates. — Laws 2003, ch. 235 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

61-3-28. Disciplinary proceedings; judicial review; application of uniform licensing act; limitation.

- A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, revoke or suspend any license held or applied for under

the Nursing Practice Act, reprimand or place a licensee on probation or deny, limit or revoke the multistate licensure privilege of a nurse desiring to practice or practicing professional registered nursing or licensed practical nursing as provided in the Nurse Licensure Compact [61-3-24.1 NMSA 1978] upon grounds that the licensee, applicant or nurse:

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license or certificate of registration;
- (2) is convicted of a felony;
- (3) is unfit or incompetent;
- (4) is intemperate or is addicted to the use of habit-forming drugs;
- (5) is mentally incompetent;
- (6) is guilty of unprofessional conduct as defined by the rules and regulations adopted by the board pursuant to the Nursing Practice Act;
- (7) has willfully or repeatedly violated any provisions of the Nursing Practice Act, including any rule or regulation adopted by the board pursuant to that act;
- (8) was licensed to practice nursing in any jurisdiction, territory or possession of the United States or another country and was the subject of disciplinary action as a licensee for acts similar to acts described in this subsection. A certified copy of the record of the jurisdiction, territory or possession of the United States or another country taking the disciplinary action is conclusive evidence of the action; or
- (9) uses conversion therapy on a minor.

B. Disciplinary proceedings may be instituted by any person, shall be by complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. Any person filing a complaint shall be immune from liability arising out of civil action if the complaint is filed with reasonable care.

D. The board shall not initiate a disciplinary action more than two years after the date that it receives a complaint.

E. The time limitation contained in Subsection D of this section shall not be tolled by any civil or criminal litigation in which the licensee or applicant is a party, arising substantially from the same facts, conduct, transactions or occurrences that would be the basis for the board's disciplinary action.

F. The board may recover the costs associated with the investigation and disposition of a disciplinary proceeding from the nurse who is the subject of the proceeding if the nurse is practicing professional registered nursing or licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact.

G. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

History: 1953 Comp., § 67-2-24, enacted by Laws 1968, ch. 44, § 24; 1977, ch. 220, § 18; 1982, ch. 108, § 6; 1985, ch. 67, § 6; 1991, ch. 253, § 1; 1993, ch. 61, § 6; 2001, ch. 137, § 11; 2003, ch. 307, § 8; 2017, ch. 132, § 2.

The 2017 amendment, effective June 16, 2017, prohibited the use of conversion therapy on a minor, provided that the board of nursing may deny, revoke or suspend any license issued by the board if the licensee uses conversion therapy on a minor, and defined certain terms as used in this section; in Subsection A, added Paragraph A(9); in Subsection C, after "complaint is filed", deleted "in good faith and without actual malice" and added "with reasonable care"; and added Subsection G.

The 2003 amendment, effective January 1, 2004, in Subsection A inserted "or deny, limit or revoke the multistate licensure privilege of a nurse desiring to practice or practicing professional registered nursing or licensed practical nursing as provided in the Nurse Licensure Compact" following "licensee on probation" near the end, and added "or nurse" at the end; and added Subsection F.

The 2001 amendment, effective June 15, 2001, deleted "sworn" preceding "complaint" in Subsections B, C, and D and deleted "Notwithstanding Section 61-1-3.1 NMSA 1978" from the beginning of Subsection D.

The 1993 amendment, effective June 18, 1993, deleted "subsequent to licensure" following "felony" in Paragraph (2) of Subsection A; rewrote Paragraph (8) of Subsection A; and substituted "NMSA 1978" for "of the Uniform Licensing Act" in Subsection D.

The 1991 amendment, effective June 14, 1991, added "Limitation" to the section heading; in Subsection A, inserted "or reprimand or place a licensee on probation" in the introductory paragraph, added "as defined by the

rules and regulations adopted by the board pursuant to the Nursing Practice Act" at the end of Paragraph (6), and added "including any rule or regulation adopted by the board pursuant to that act" at the end of Paragraph (7); and added Subsections D and E.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Stay pending review of judgment or order revoking or suspending license, 166 A.L.R. 575.

Privilege of communications by or to nurse or attendant, 47 A.L.R.2d 742.

Nurse's liability for her own negligence or malpractice, 51 A.L.R.2d 970.

Liability of operating surgeon for negligence of nurse assisting him, 12 A.L.R.3d 1017.

Comment note on hearsay evidence in proceedings before state administrative agencies, 36 A.L.R.3d 12.

Validity, construction and application of statutes making public proceedings open to the public, 38 A.L.R.3d 1070, 34 A.L.R.5th 591.

Revocation of nurse's license to practice profession, 55 A.L.R.3d 1141.

Physician's or other healer's conduct; or conviction of offense, not directly related to medical practice, as ground for disciplinary action, 34 A.L.R.4th 609.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 38 to 42.

61-3-29. Exceptions.

The Nursing Practice Act shall not apply to or affect:

- A. gratuitous nursing by friends or members of the family;
- B. nursing assistance in case of emergencies;
- C. nursing by students when enrolled in approved schools of nursing or approved courses for the education of professional or practical nurses when such nursing is part of the educational program;
- D. nursing in this state by a nurse licensed in another state whose employment requires the nurse to transport a patient or who is a camp nurse who accompanies and cares for a patient temporarily residing in this state if the nurse's practice in this state does not exceed three months and the nurse does not claim to be licensed in this state;
- E. nursing in this state by a person employed by the United States government, while in the discharge of the person's official duties;
- F. the practice of midwifery by a person other than a registered nurse who is certified or licensed in this state to practice midwifery;
- G. a person working as a home health aide, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;
- H. a nursing aide or orderly, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;
- I. a registered nurse holding a current license in another jurisdiction who is enrolled in a professional course requiring nursing practice as a part of the educational program; or
- J. performance by a personal care provider in a noninstitutional setting of bowel and bladder assistance for an individual whom a health care provider certifies is stable, not currently in need of medical care and able to communicate and assess the individual's own needs.

History: 1953 Comp., § 67-2-25, enacted by Laws 1968, ch. 44, § 25; 1977, ch. 220, § 19; 1985, ch. 67, § 7; 1990, ch. 112, § 1; 1991, ch. 190, § 20; 1991, ch. 209, § 2;

1995, ch. 117, § 2; 1997, ch. 244, § 18; 2003, ch. 276, § 11; 2005, ch. 303, § 2; 2005, ch. 307, § 8.

2005 Multiple Amendments. — Laws 2005, ch. 303, § 2 and Laws 2005, ch. 307, § 8 enacted different

amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 307, § 8, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 303, § 2 and Laws 2005, ch. 307, § 8 are described below. To view the session laws in their entirety, see the 2005 session laws on *NMOneSource.com*.

Laws 2005, ch. 307, § 8, effective April 7, 2005, in Subsection D, deleted "legally licensed" and added "licensed in"; in Subsection E, after "government" deleted "or any bureau, division or agency thereof"; and deleted former Subsection K, which provided that the Nursing Practice Act does not apply to medication aides working in licensed intermediate care facilities for the mentally retarded who are participating in the developmentally disabled Medicaid waiver program, who have completed an approved training program and who are certified to administer routine oral medications.

Laws 2005, ch. 303, § 2, effective April 7, 2005, deleted former Subsection K.

The 2003 amendment, effective June 20, 2003, in Subsection D, substituted "patient" for "citizen of this state" following "to transport a" and substituted "if" for "provided that" following "in this state".

The 1997 amendment, effective June 20, 1997, substituted "transport a citizen of this state or who is a camp nurse who accompanies and cares" for "accompany and care" and "nurse's practice in this state" for "temporary residence" in Subsection D, and substituted "pursuant to" for "under" near the end of Subsections G and H.

The 1995 amendment, effective July 1, 1995, in Subsection K, inserted "working", inserted "or serving persons who are participating the developmentally disabled Medicaid waiver program and", substituted "have completed" for "complete", and substituted "which may" for "which could".

The 1991 amendment, effective July 1, 1991, added Subsection K and made related stylistic changes. This section was also amended by Laws 1991, ch. 190, § 20, effective June 14, 1991. The section was set out as amended by Laws 1991, ch. 209, § 2. See 12-1-8 NMSA 1978.

The 1990 amendment, effective May 16, 1990, added Subsection J.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Midwifery: state regulation, 59 A.L.R.4th 929.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 5, 13.

61-3-29.1. Diversion program created; advisory committee; renewal fee; requirements; immunity from civil actions.

A. The board shall establish a diversion program to rehabilitate nurses whose competencies may be impaired because of the abuse of drugs or alcohol so that nurses can be treated and returned to or continue the practice of nursing in a manner that will benefit the public. The intent of the diversion program is to develop a voluntary alternative to traditional disciplinary actions and an alternative to lengthy and costly investigations and administrative proceedings against such nurses, at the same time providing adequate safeguards for the public.

B. The board shall appoint one or more evaluation committees, hereinafter called "regional advisory committees", each of which shall be composed of members with expertise in chemical dependency. At least one member shall be a registered nurse. No current member of the board shall be appointed to a regional advisory committee. The executive officer of the board or the executive officer's designee shall be the liaison between each regional advisory committee and the board.

C. Each regional advisory committee shall function under the direction of the board and in accordance with regulations of the board. The regulations shall include directions to a regional advisory committee to:

- (1) establish criteria for continuance in the program;
- (2) develop a written diversion program contract to be approved by the board that sets forth the requirements that shall be met by the nurse and the conditions under which the diversion program may be successfully completed or terminated;
- (3) recommend to the board in favor of or against each nurse's discharge from the diversion program;
- (4) evaluate each nurse's progress in recovery and compliance with the nurse's diversion program contract;
- (5) report violations to the board;
- (6) submit an annual report to the board; and
- (7) coordinate educational programs and research related to chemically dependent nurses.

D. The board may increase the renewal fee for each nurse in the state not to exceed twenty dollars (\$20.00) for the purpose of implementing and maintaining the diversion program.

E. Files of nurses in the diversion program shall be maintained in the board office and shall be confidential except as required to be disclosed pursuant to the Nurse Licensure Compact, when used to make a report to the board concerning a nurse who is not cooperating and complying with the diversion program contract or, with written consent of a nurse, when used for research purposes as long as the nurse is not specifically identified. However, the files shall be subject to discovery or subpoena. The confidential provisions of this subsection are of no effect if the nurse admitted to the diversion program leaves the state prior to the completion of the program.

F. A person making a report to the board or to a regional advisory committee regarding a nurse suspected of practicing nursing while habitually intemperate or addicted to the use of habit-forming drugs or making a report of a nurse's progress or lack of progress in rehabilitation shall be immune from civil action for defamation or other cause of action resulting from such reports if the reports are made in good faith and with some reasonable basis in fact.

G. A person admitted to the diversion program for chemically dependent nurses who fails to comply with the provisions of this section or with the rules and regulations adopted by the board pursuant to this section or with the written diversion program contract or with any amendments to the written diversion program contract may be subject to disciplinary action in accordance with Section 61-3-28 NMSA 1978.

History: 1978 Comp., § 61-3-29.1, enacted by Laws 1987, ch. 285, § 1; 1991, ch. 190, § 21; 1991, ch. 253, § 2; 1997, ch. 244, § 19; 2001, ch. 137, § 12; 2018, ch. 1, § 2.

The 2018 amendment, effective January 18, 2018, provided an exception to the confidentiality requirements of the nurse rehabilitation diversion program and made technical changes; in Subsection B, after "The executive officer of the board or", deleted "his" and added "the executive officer's"; in Subsection C, Paragraph 4, after "compliance with", deleted "his" and added "the nurse's"; in Subsection E, after "except", added "as required to be disclosed pursuant to the Nurse Licensure Compact", and after "However", deleted "such" and added "the"; and in Subsections F and G, changed "Any person" to "A person".

The 2001 amendment, effective June 15, 2001, in Subsection E, inserted the exception that files of nurses in the diversion program may be used for research purposes if

the name of the nurse is not identified and written consent is obtained.

The 1997 amendment, effective June 20, 1997, in Subsection B, rewrote the first sentence and substituted "a regional" for "an" in the second sentence and near the beginning of Subsection F, rewrote Subsection C, and substituted "program contract" for "agreement" in Subsections E and G.

The 1991 amendment, effective June 14, 1991, inserted "or his designee" in the final sentence in Subsection B; substituted "twenty dollars (\$20.00)" for "ten dollars (\$10.00)" in Subsection D; added Subsection G; and made minor stylistic changes in Subsections A, B and C. Identical amendments to this section were enacted by Laws 1991, ch. 190, § 21. The section was set out as amended by Laws 1991, ch. 253, § 2. See 12-1-8 NMSA 1978.

61-3-30. Violations; penalties.

It is a misdemeanor for a person, firm, association or corporation to:

A. sell, fraudulently obtain or furnish a nursing diploma, license, examination or record or to aid or abet therein;

B. practice professional nursing as defined by the Nursing Practice Act unless exempted or duly licensed to do so pursuant to the provisions of that act;

C. practice licensed practical nursing as defined by the Nursing Practice Act unless exempted or duly licensed to do so pursuant to the provisions of that act;

D. use in connection with his name a designation tending to imply that such person is a registered nurse or a licensed practical nurse unless duly licensed pursuant to the provisions of the Nursing Practice Act;

E. conduct a school of nursing or a course for the education of professional or licensed practical nurses for licensing unless the school or course has been approved by the board;

F. practice nursing after the person's license has lapsed or been suspended or revoked. Such person shall be considered an illegal practitioner;

G. employ unlicensed persons to practice as registered nurses or as licensed practical nurses;

H. practice or employ a person to practice as a certified registered nurse anesthetist, certified nurse practitioner or clinical nurse specialist unless endorsed as a certified registered nurse anesthetist, certified nurse practitioner or clinical nurse specialist pursuant to the Nursing Practice Act;

I. employ as a certified hemodialysis technician or certified medication aide an unlicensed person without a certificate from the board to practice as a certified hemodialysis technician or certified medication aide; or

J. otherwise violate a provision of the Nursing Practice Act.

The board shall assist the proper legal authorities in the prosecution of all persons who violate a provision of the Nursing Practice Act. In prosecutions under the Nursing Practice Act, it shall not be necessary to prove a general course of conduct. Proof of a single act, a single holding out or a single attempt constitutes a violation, and, upon conviction, such person shall be sentenced to be imprisoned in the county jail for a definite term not to exceed one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or both.

History: 1953 Comp., § 67-2-26, enacted by Laws 1968, ch. 44, § 26; 1977, ch. 220, § 20; 1985, ch. 67, § 8; 1991, ch. 190, § 22; 2001, ch. 137, § 13; 2005, ch. 307, § 9.

The 2005 amendment, effective April 7, 2005, added Subsection I to provide that it is a misdemeanor to employ as a certified hemodialysis technician or certified medication aide an unlicensed person without a certificate from the board.

The 2001 amendment, effective June 15, 2001, made stylistic changes throughout the section.

The 1991 amendment, effective June 14, 1991, added Subsection H; redesignated former Subsection H as Subsection I and made a related stylistic change in Subsection G; and made minor stylistic changes in Subsections C and E.

61-3-31. Repealed.

Repeals. — Laws 2005, ch. 307, § 10 repealed 61-3-31 NMSA 1978, as enacted by Laws 1979, ch. 379, § 11, relating to termination of agency life, effective April 7, 2005.

For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

ARTICLE 3A

Safe Harbor for Nurses

Sec. 61-3A-1. Short title.
61-3A-2. Definitions.

Sec. 61-3A-3. Safe harbor; health care facility responsibility.

61-3A-1. Short title.

This act [61-3A-1 through 61-3A-3 NMSA 1978] may be cited as the "Safe Harbor for Nurses Act".

History: Laws 2019, ch. 52, § 1.

Effective dates. — Laws 2019, ch. 52 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-3A-2. Definitions.

As used in the Safe Harbor for Nurses Act:

A. "assignment" means the designated responsibility for the provision or supervision of nursing care for a defined work period in a defined work setting, including the specified functions, duties, practitioner orders, supervisory directives and amount of work designated as an individual nurse's responsibility; provided that changes in a nurse's assignment may occur at any time during the work period;

B. "good faith" means taking action supported by a sincere belief with a reasonable factual or legal basis other than the nurse's moral, religious or personal beliefs;

C. "health care facility" means an entity licensed by the department of health that provides health care on its premises and has three or more nurses;

D. "nurse" means a nurse licensed pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978] as a registered nurse or a licensed practical nurse; and

E. "safe harbor" means a process that:

(1) protects a registered nurse or a licensed practical nurse from adverse action by the health care facility where the nurse is working when the nurse makes a good faith request to be allowed to reject an assignment, which request is based on the nurse's:

(a) assessment of the nurse's own education, knowledge, competence or experience;

and

(b) immediate assessment of the risk for patient safety or potential violation of the Nursing Practice Act or board of nursing rules; and

(2) provides for further assessment of the situation.

History: Laws 2019, ch. 52, § 2.

Effective dates. — Laws 2019, ch. 52 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-3A-3. Safe harbor; health care facility responsibility.

A. A nurse may invoke safe harbor when:

(1) in the nurse's good faith judgment, the nurse lacks the basic knowledge, skills or abilities necessary to deliver nursing care that is safe and that meets the minimum standards of care to such an extent that accepting the assignment would expose one or more patients to an unjustifiable risk of harm or would constitute a violation of the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978] or board of nursing rules; or

(2) the nurse questions the medical reasonableness of another health care provider's order that the nurse is required to execute.

B. A nurse who intends to invoke safe harbor shall invoke it before the nurse engages in conduct or an assignment giving rise to the nurse's request for safe harbor. A nurse may also invoke safe harbor at any time during the work period, when an initial assignment changes and, in the nurse's good faith judgment, the change creates a situation that comports with the requirements for invoking safe harbor pursuant to Subsection A of this section. A health care facility shall develop a process by which a nurse employed or contracted by that facility may invoke safe harbor.

C. A safe harbor process shall include:

(1) notification to all nurses on staff as to how safe harbor may be invoked;

(2) notification by the nurse to the nurse's supervisor that the nurse is invoking safe harbor;

(3) written documentation with the date, time and location of the invocation of safe harbor and the reason for invocation, signed by the supervisor and the nurse;

(4) a post-occurrence review of the situation that:

(a) includes at least one other staff nurse and nurse manager, as the health care facility defines those roles; and

(b) is used to determine whether additional action is required to minimize the likelihood of similar situations in the future; and

(5) documentation of the resolution and review of the matter in which safe harbor was invoked.

D. A health care facility shall not retaliate against, demote, suspend, terminate, discipline, discriminate against or report any action to the board of nursing when a nurse makes a good faith request for safe harbor.

History: Laws 2019, ch. 52, § 3.

Effective dates. — Laws 2019, ch. 52 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ARTICLE 3B

Lactation Care Provider

Sec.

61-3B-1. Short title.

61-3B-2. Definitions.

61-3B-3. Board powers.

61-3B-4. Licensure requirement; qualifications; exemptions from licensure.

Sec.

61-3B-5. License fees; term; renewal.

61-3B-6. Disciplinary proceedings.

61-3B-7. Expedited license.

61-3B-1. Short title.

Chapter 61, Article 3B NMSA 1978 may be cited as the "Lactation Care Provider Act".

History: Laws 2017, ch. 136, § 1; 1978 Comp., § 61-36-1, recompiled and amended as § 61-3B-1 by Laws 2022, ch. 39, § 20.

Recompilations. — Laws 2022, ch. 39, § 20 recompiled and amended former 61-36-1 NMSA 1978 as 61-3B-1 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, changed "Sections 1 through 6 of this act" to "Chapter 61, Article 3B NMSA 1978".

61-3B-2. Definitions.

As used in the Lactation Care Provider Act:

A. "applicant" means an individual seeking a license to provide lactation care and services as a licensee pursuant to the Lactation Care Provider Act;

B. "approved certification" means certification as a lactation care provider conferred by a certification program accredited by any nationally or internationally recognized accrediting agency that is approved by the board and that establishes continuing education requirements;

C. "board" means the board of nursing;

D. "lactation care and services" means the clinical application of scientific principles and a multidisciplinary body of evidence for the evaluation, problem identification, treatment, education and consultation for the provision of lactation care and services to families, including:

(1) clinical lactation assessment through the systematic collection of subjective and objective data;

(2) analysis of data and creation of a plan of care;

(3) implementation of a lactation care plan with demonstration and instruction to parents and communication to primary health care providers;

(4) evaluation of outcomes;

(5) provision of lactation education to parents and health care providers; and

(6) recommendation and use of assistive devices;

E. "license" means a license to practice as a lactation care provider that the board issues pursuant to the Lactation Care Provider Act;

F. "licensee" means a lactation care provider licensed as a licensed lactation care provider pursuant to the Lactation Care Provider Act;

G. "member" means a member of the board; and

H. "practice" means a course of business in which lactation care and services are rendered or offered to any individual, family or group of two or more individuals.

History: Laws 2017, ch. 136, § 2; 1978 Comp., § 61-36-2, recompiled as § 61-3B-2 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-36-2 NMSA 1978 as 61-3B-2 NMSA 1978, effective May 18, 2022.

61-3B-3. Board powers.

The board may:

A. enforce the provisions of the Lactation Care Provider Act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] and promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to execute the provisions of the Lactation Care Provider Act;

B. license qualified applicants;

C. discipline licensees;

D. enforce qualification for licensure;

E. establish standards for licensee competence for continuing in or returning to practice based on approved certification;

F. issue orders relating to the practice of lactation care and services in accordance with the Uniform Licensing Act;

G. regulate licensee advertising and prohibit false, misleading or deceptive practices;

H. establish a code of conduct for licensees;

I. prepare information for the public that describes the regulatory functions of the board and the procedures by which complaints are filed with and resolved by the board; and

J. appoint a lactation care provider advisory committee consisting of at least one member who is a board member and at least two members who are experts in lactation to assist in the performance of the board's duties.

History: Laws 2017, ch. 136, § 3; 1978 Comp., § 61-36-3, recompiled and amended as § 61-3B-3 by Laws 2022, ch. 39, § 21.

Recompilations. — Laws 2022, ch. 39, § 21 recompiled and amended former 61-36-3 NMSA 1978 as 61-3B-3 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, effective May 18, 2022, provided that the board of nursing shall enforce the provisions of the Lactation Care Provider Act

in accordance with the Uniform Licensing Act and promulgate rules in accordance with the State Rules Act; and in Subsection A, after the first occurrence of "Lactation Care Provider Act", added "in accordance with the Uniform Licensing Act", after "promulgate rules", added "in accordance with the State Rules Act", and after "to execute the provisions of", deleted "that" and added "Lactation Care Provider Act".

61-3B-4. Licensure requirement; qualifications; exemptions from licensure.

A. An individual shall not use the title "licensed lactation care provider" unless that individual is a licensee.

B. An applicant for a license as a licensee shall:

(1) be at least eighteen years of age;

(2) submit an application completed upon a form that the board prescribes and in accordance with board rules, accompanied by fees required by board rules;

(3) possess current approved certification; and

(4) assist the board in obtaining the applicant's criminal history background check by:

(a) providing fingerprints on two fingerprint cards or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation or the department of public safety; and

(b) paying the cost of obtaining the fingerprints and criminal history background checks. An applicant shall have the right to inspect or challenge the validity of the record developed by the background check if the applicant is denied licensure as established by board rule.

C. Nothing in the Lactation Care Provider Act shall be construed to affect or prevent the practice of lactation care and services by licensed care providers or other persons; provided that a person who is not a licensee shall not hold that person out or represent that person's self to be a licensed lactation care provider.

History: Laws 2017, ch. 136, § 4; 1978 Comp., § 61-36-4, recompiled as § 61-3B-4 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-36-4 NMSA 1978 as 61-3B-4 NMSA 1978, effective May 18, 2022.

61-3B-5. License fees; term; renewal.

A. Except as provided in Section 61-1-34 NMSA 1978, the board shall require each applicant for initial licensure or renewal of a license to pay a nonrefundable licensure fee that shall not exceed one hundred dollars (\$100).

B. A license shall expire biennially from the date of initial licensure.

C. The board shall renew licenses only upon receipt of renewal of licensure fees and evidence of compliance with continuing education requirements.

History: Laws 2017, ch. 136, § 5; 2020, ch. 6, § 61; 1978 Comp., § 61-36-5, recompiled as § 61-3B-5 by Laws 2022, ch. 39, § 105.

Recompilations.—Laws 2022, ch. 39, § 105 recompiled former 61-36-5 NMSA 1978 as 61-3B-5 NMSA 1978, effective May 18, 2022.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

61-3B-6. Disciplinary proceedings.

A. In accordance with the procedures contained in the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the board may deny, revoke or suspend a license held or applied for pursuant to the Lactation Care Provider Act, reprimand or place a licensee on probation or deny, limit or revoke a privilege of a licensee desiring to practice or practicing lactation care and services upon grounds that the licensee or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license;
- (2) is convicted of a felony;
- (3) is unfit or incompetent;
- (4) is intemperate or is addicted to the use of habit-forming drugs;
- (5) is guilty of unprofessional conduct as defined by board rules;
- (6) has willfully or repeatedly violated any provisions of the Lactation Care Provider Act, including any board rule adopted pursuant to that act; or
- (7) was certified or licensed to provide lactation care and services in another licensing jurisdiction and was the subject of disciplinary action for acts similar to acts described in this subsection. A certified copy of the record of the certification or licensure board disciplinary action taken by another licensing jurisdiction is conclusive evidence of the action.

B. The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with or at any time after the initiation of proceedings for a hearing provided under the Uniform Licensing Act, if the board finds that evidence in its possession indicates that the licensee:

- (1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice;
- (2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or
- (3) has pled guilty to or been found guilty of any offense related to the practice of medicine or for any violent criminal offense in this state or a substantially equivalent criminal offense in another jurisdiction.

C. A licensee is not required to comply with a summary action taken pursuant to Subsection B of this section until service has been made or the licensee has actual knowledge of the order, whichever occurs first.

D. A person whose license is suspended or restricted under this section is entitled to a hearing by the board pursuant to the Uniform Licensing Act within fifteen days from the date that the licensee requests a hearing.

E. Disciplinary proceedings may be instituted by any person, shall be by complaint and shall conform with the provisions of the Uniform Licensing Act. A party to a hearing may obtain a copy of the hearing record upon payment of costs for the copy.

F. A person filing a complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

G. All written and oral communication made by any person to the board relating to actual or potential disciplinary action, including complaints made to the board, shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978]. All data, communications and information acquired, prepared or disseminated by the board relating to actual or potential disciplinary action or its investigation of complaints shall not be disclosed, except to the extent necessary to carry out the purposes of the board or in a judicial appeal from the actions of the board or in a referral of cases made to law enforcement agencies, national database clearinghouses or other licensing boards.

H. The board shall not initiate a disciplinary action more than two years after the date that it receives a complaint.

I. The time limitation contained in Subsection D of this section shall not be tolled by any civil or criminal litigation in which the licensee or applicant is a party, arising substantially from the same facts, conduct, transactions or occurrences that would be the basis for the board's disciplinary action.

J. The board may recover the costs associated with the investigation and disposition of a disciplinary proceeding from the person who is the subject of the proceeding.

History: Laws 2017, ch. 136, § 6; 1978 Comp., § 61-36-6, recompiled and amended as § 61-3B-6 by Laws 2022, ch. 39, § 22.

Recompilations. — Laws 2022, ch. 39, § 22 recompiled and amended former 61-36-6 NMSA 1978 as 61-3B-6 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, made changes to conform with amendments to the Uniform Licensing Act; and in Subsection A, Paragraph A(7), before "jurisdiction" added "licensing", and after "jurisdiction", deleted "territory or possession of the United States or another country".

61-3B-7. Expedited license.

The board shall issue an expedited license to a person who holds a license in another licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978 if the person holds a current approved certification or license in another licensing jurisdiction. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and determine foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: Laws 2022, ch. 39, § 23.

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

ARTICLE 4

Chiropractic

Sec. 61-4-1. Short title. (Repealed effective July 1, 2028.)

61-4-2. Definitions. (Repealed effective July 1, 2028.)

61-4-3. Board created; appointment; officers; duties; compensation. (Repealed effective July 1, 2028.)

61-4-4. Application requirements; evaluation. (Repealed effective July 1, 2028.)

61-4-5. Evidence of graduation; creditation of college. (Repealed effective July 1, 2028.)

61-4-6. Examination; subjects; method of treatment; recording license. (Repealed effective July 1, 2028.)

61-4-7. Disposition of funds; chiropractic fund created; method of payment. (Repealed effective July 1, 2028.)

Sec. 61-4-8. License without examination. (Repealed effective July 1, 2028.)

61-4-9. Privileges and obligations. (Repealed effective July 1, 2028.)

61-4-9.1. Advanced practice chiropractic certification registry established. (Repealed effective July 1, 2028.)

61-4-9.2. Certified advanced practice chiropractic physician authority defined. (Repealed effective July 1, 2028.)

61-4-9.3. Use of chiropractic name limited. (Repealed effective July 1, 2028.)

61-4-10. Refusal, suspension or revocation of license. (Repealed effective July 1, 2028.)

Sec.

- 61-4-11. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)
- 61-4-12. Penalties. (Repealed effective July 1, 2028.)
- 61-4-13. Annual renewal of license; fee; notice. (Repealed effective July 1, 2028.)
- 61-4-14. Failure to renew; cancellation; reinstatement; permissive temporary cancellation. (Repealed effective July 1, 2028.)

Sec.

- 61-4-15. Exemptions. (Repealed effective July 1, 2028.)
- 61-4-16. Existing licensees. (Repealed effective July 1, 2028.)
- 61-4-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

61-4-1. Short title. (Repealed effective July 1, 2028.)

Chapter 61, Article 4 NMSA 1978 may be cited as the "Chiropractic Physician Practice Act".

History: 1953 Comp., § 67-3-9, enacted by Laws 1968, ch. 3, § 1; 1993, ch. 198, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

Cross references. — For practice of chiropractic being unaffected by act relating to osteopathic medicine and surgery, see 61-10-4 NMSA 1978.

The 1993 amendment, effective June 18, 1993, rewrote this section, which formerly read "This act may be cited as the 'Chiropractic Practice Act'."

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Evidence of confidential communications, 68 A.L.R. 177.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 A.L.R. 630.

Competency as expert in personal injury action as to injured person's condition, medical requirements, nature and extent of injury and the like, 52 A.L.R.2d 1384.

Competency of physician or surgeon, of school of practice other than that to which defendant belongs, to testify in malpractice case, 85 A.L.R.2d 1022.

Liability of osteopath for medical malpractice, 73 A.L.R.4th 24.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 A.L.R.4th 273.

61-4-2. Definitions. (Repealed effective July 1, 2028.)

As used in the Chiropractic Physician Practice Act:

A. "advanced practice chiropractic certification registry" means a compendium kept by the board that meets and maintains the board's established credentials for certified advanced practice chiropractic physicians;

B. "certified advanced practice chiropractic physician" means a chiropractic physician who has been included in the advanced practice chiropractic certification registry;

C. "chiropractic" means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. It shall include, but not be limited to, the prescribing and administering of all natural agents to assist in the healing act, such as food, water, heat, cold, electricity, mechanical appliances and medical devices; the selling of herbs, nutritional supplements and homeopathic remedies; the administering of a drug by injection by a certified advanced practice chiropractic physician; and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery, the prescription or use of controlled or dangerous drugs and the practice of acupuncture;

D. "board" means the chiropractic board;

E. "chiropractic physician" includes doctor of chiropractic, chiropractor and chiropractic physician and means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act; and

F. "chiropractic assistant" means a person who practices under the on-premises supervision of a licensed chiropractic physician.

History: 1953 Comp., § 67-3-10, enacted by Laws 1968, ch. 3, § 2; 1993, ch. 198, § 2; 2008, ch. 44, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 2008 amendment, effective May 14, 2008, added Subsections A and B; and in Subsection C, permitted the prescribing and administering of natural agents and medical devices and the administering of a drug by injection by a certified advanced practice chiropractic physician, and excluded the prescription or use of controlled drugs and the practice of acupuncture.

The 1993 amendment, effective June 18, 1993, inserted "Physician" in the introductory paragraph and in Subsection C; rewrote Subsection A; substituted "board of chiropractic" for "chiropractic board" in Subsection B; substituted "chiropractic physician" for "chiropractor" and inserted "chiropractor" in Subsection C; added Subsection D; and made minor stylistic changes.

ANNOTATIONS

Licensed chiropractor must be considered a "practitioner of the healing arts". *Katz v. N.M. Dep't of Human Servs.*, 1981-NMSC-012, 95 N.M. 530, 624 P.2d 39.

Chiropractor is not a "physician" and that profession or calling is not the practice of medicine; a chiropractor is one skilled in the art of healing in a limited manner, although not one skilled in physic since such latter term refers to the practice of medicine. 1959-60 Op. Att'y Gen. No. 59-96.

Acupuncture falls within scope of chiropractic. 1976 Op. Att'y Gen. No. 76-32.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 5.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 A.L.R. 630.

Scope of practice of chiropractic, 16 A.L.R.4th 58.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 5.

61-4-3. Board created; appointment; officers; duties; compensation. (Repealed effective July 1, 2028.)

A. The "chiropractic board" is created and is administratively attached to the regulation and licensing department. The board shall consist of six persons, four of whom have been continuously engaged in the practice of chiropractic in New Mexico for five years immediately prior to their appointment. Two persons shall represent the public and shall not have practiced chiropractic in this state or any other jurisdiction. A person shall not be appointed to the board who is an officer or employee of or who is financially interested in any school or college of chiropractic, medicine, surgery or osteopathy.

B. Members of the board shall be appointed by the governor for staggered terms of five years or less and in a manner that the term of one board member expires on July 1 of each year. A list of five names for each professional member vacancy shall be submitted by the New Mexico chiropractic association to the governor for consideration in the appointment of board members. A vacancy shall be filled by appointment for the unexpired term. Board members shall serve until their successors have been appointed and qualified.

C. The board shall annually elect a chair and a secretary-treasurer. A majority of the board constitutes a quorum. The board shall meet quarterly. Special meetings may be called by the chair and shall be called upon the written request of two members of the board. Notification of special meetings shall be made by certified mail unless such notice is waived by the entire board and the action noted in the minutes. Notice of all regular meetings shall be made by regular mail at least ten days prior to the meeting, and copies of the minutes of all meetings shall be mailed to each board member within thirty days after a meeting.

D. A board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board.

E. The board shall adopt a seal.

F. The board shall promulgate and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules necessary for the implementation and enforcement of the provisions of the Chiropractic Physician Practice Act, including educational requirements for a chiropractic assistant.

G. The board, for the purpose of protecting the health and well-being of the citizens of this state and maintaining and continuing informed professional knowledge and awareness, shall establish by rule mandatory continuing education requirements for chiropractic physicians and certified advanced practice chiropractic physicians licensed in this state.

H. Failure to comply with the rules adopted by the board shall be grounds for investigation, which may lead to revocation of license.

I. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance for each day necessarily spent in the discharge of their duties.

History: 1953 Comp., § 67-3-11, enacted by Laws 1968, ch. 3, § 3; 1973, ch. 169, § 1; 1977, ch. 109, § 1; 1979, ch. 77, § 1; 1983, ch. 187, § 1; 1991, ch. 189, § 5; 1993, ch. 198, § 3; 2003, ch. 408, § 3; 2006, ch. 18, § 1; 2008, ch. 44, § 8; 2022, ch. 39, § 24.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, removed a provision requiring the chiropractic board to establish regulations related to continuing education requirements in accordance with the provisions of the Uniform Licensing Act and instead required the chiropractic board to establish by rule mandatory continuing education requirements for chiropractic physicians and certified advanced practice chiropractic physicians licensed in this state, and made technical amendments; in Subsection A, deleted "There is created", after "The 'chiropractic board'", deleted "The board shall be" and added "is created and is", and after "four", deleted "shall" and added "of whom"; in Subsection F, after "all rules", deleted "and regulations"; in Subsection G, after "shall establish by", deleted "regulations adopted in accordance with the provisions of the Uniform Licensing Act" and added "rule"; and in Subsection H, after "rules", deleted "and regulations".

The 2008 amendment, effective May 14, 2008, added "certified advanced practice chiropractic physician" in Subsection G.

The 2006 amendment, effective May 17, 2006, deleted former Subsection G, which required the board to hold examinations at least twice a year and to notify applicants of the examination.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the

regulation and licensing department." following the first sentence of Subsection A; and deleted "one of the members shall be appointed for a term ending July 1, 1980, one for a term ending July 1, 1981, one for a term ending July 1, 1982, one for a term ending July 1, 1983 and one for a term ending July 1, 1984. Thereafter, appointments shall be made for terms" following "governor for staggered terms" near the beginning of Subsection B.

The 1993 amendment, effective June 18, 1993, in Subsection B, substituted "chiropractic associations" for "chiropractic association" in the third sentence; in Subsection C, substituted "A majority" for "Three members" and "constitutes" for "constitute" in the second sentence and substituted "quarterly" for "at least every three months" in the third sentence; divided former Subsection E into Subsections E and F, deleting "and" at the end of Subsection E and adding "The board shall" at the beginning of Subsection F; inserted "Physician" and added "including educational requirements for a chiropractic assistant" at the end of Subsection F; redesignated former Subsections F to I as Subsections G to J; and rewrote Subsection I.

The 1991 amendment, effective June 14, 1991, in Subsection A, substituted "six persons" for "five persons" in the second sentence, "Four" for "Three" in the third sentence, "Two persons" for "The fifth person" at the beginning of the fourth sentence, and made a minor stylistic change.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 21 to 24.

61-4-4. Application requirements; evaluation. (Repealed effective July 1, 2028.)

A. Each applicant for a license to practice chiropractic shall:

(1) make application on forms furnished by the board;

(2) submit evidence on oath satisfactory to the board that the applicant has reached the age of majority, has completed a preliminary education equal to the requirements for graduation from high school, is of good moral character and, after January 1, 1976, except for any student currently enrolled in a college of chiropractic, has completed two years of college-level study in an accredited institution of higher learning and is a graduate of a college of chiropractic that meets the standards of professional education prescribed in Section 61-4-5 NMSA 1978; and

(3) pay in advance to the board fees:

(a) for examination; and

(b) except as provided in Section 61-1-34 NMSA 1978, for issuance of a license.

B. In evaluating an application, the board may use the services of a professional background information service that compiles background information regarding applicants from multiple sources.

C. Each applicant for inclusion in the advanced practice chiropractic certification registry shall furnish materials and proof of education and training as established by rule of the board.

History: 1953 Comp., § 67-3-12, enacted by Laws 1968, ch. 3, § 4; 1973, ch. 35, § 1; 1973, ch. 237, § 1; 1978, ch. 114, § 1; 1983, ch. 187, § 2; 1993, ch. 198, § 4; 2006, ch. 18, § 2; 2008, ch. 44, § 9; 2020, ch. 6, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

Cross references. — For age of majority, see 28-6-1 NMSA 1978.

For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, Subparagraph A(3)(b), added "except as provided in Section 61-1-34 NMSA 1978".

The 2008 amendment, effective May 14, 2008, added Subsection C.

The 2006 amendment, effective May 17, 2006, added Subsection B to provide that in evaluating applications,

the board may use professional background information services.

The 1993 amendment, effective June 18, 1993, rewrote Paragraphs (1) and (2) of Subsection C.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 60.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

61-4-5. Evidence of graduation; creditation of college. (Repealed effective July 1, 2028.)

In addition to the requirements prescribed in Section 61-4-4 NMSA 1978, all applicants for licensure who have matriculated at a chiropractic college after October 1, 1975 shall present evidence of having graduated from a chiropractic college having status with the accrediting commission of the council on chiropractic education or the equivalent criterion thereof.

History: Laws 1968, ch. 3, § 5; 1953 Comp., § 67-3-13; Laws 1975, ch. 176, § 1; 1993, ch. 198, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, substituted "61-4-4 NMSA 1978" for "67-3-12 NMSA 1953" and made a stylistic change.

61-4-6. Examination; subjects; method of treatment; recording license. (Repealed effective July 1, 2028.)

A. The board shall recognize successful completion of all parts of the examination conducted by the national board of chiropractic examiners.

B. The board shall examine each applicant in the act of chiropractic adjusting, procedures and methods as shall reveal the applicant's qualifications; provided that the board may waive the requirement for the board-administered examination upon proof of satisfactory completion of the examination conducted by the national board of chiropractic examiners.

C. The board shall issue a license to all applicants whose applications have been filed with and approved by the board and who have paid the required fees and passed either the board-administered examination with a general average of not less than seventy-five percent with no subject below sixty-five percent or the examination conducted by the national board of chiropractic examiners with a general average of not less than seventy-five percent with no subject below sixty-five percent. A license shall be refused to an applicant who fails to make application as provided in this section, fails the examination or fails to pay the required fees.

D. The license, when granted by the board, carries with it the title of doctor of chiropractic and entitles the holder to diagnose using any necessary diagnostic procedures, excluding invasive procedures, except as provided by the board by rule, and treat injuries, deformities or other physical or mental conditions relating to the basic concepts of chiropractic by the use of any methods as provided in this section, including but not limited to palpating, diagnosing, adjusting and treating injuries and defects of human beings by the application of manipulative, manual and mechanical means, including all natural agencies imbued with the healing act, such as food, water, heat, cold, electricity and mechanical appliances, herbs, nutritional supplements and homeopathic remedies, but excluding operative surgery and prescription or use of controlled or dangerous drugs. The holder may also supervise the use of any natural agencies imbued with the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements and homeopathic remedies administered by a chiropractic assistant.

E. Failure to display the license shall be grounds for the suspension of the license to practice chiropractic until so displayed and shall subject the licensee to the penalties for practicing without a license.

F. The board shall certify a chiropractic physician as a "certified advanced practice chiropractic physician" when the chiropractic physician has demonstrated completion of advanced coursework and met other requirements established in the Chiropractic Physician Practice Act and by rule of the board.

History: 1953 Comp., § 67-3-14, enacted by Laws 1968, ch. 3, § 6; 1975, ch. 176, § 2; 1983, ch. 187, § 3; 1993, ch. 198, § 6; 2006, ch. 18, § 3; 2008, ch. 44, § 10.

Delayed repeals: — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 2008 amendment, effective May 14, 2008, added "certified advanced practice chiropractic physician" in Subsection F.

The 2006 amendment, effective May 17, 2006, added the provision in Subsection A that the board shall recognize completion of the examination conducted by the national board of chiropractic examiners; added the provision in Subsection B to permit the board to waive the requirement for the board-administered examination upon proof of satisfactory completion of the examination of the national board of chiropractic examiners and added the provision in Subsection C that the board shall issue a

license to an applicant who passes the examination conducted by the national board of chiropractic examiners with an average of not less than seventy-five percent with no subject below sixty-five percent.

The 1993 amendment, effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

61-4-7. Disposition of funds; chiropractic fund created; method of payment. (Repealed effective July 1, 2028.)

A. There is created the "chiropractic fund".

B. All funds received by the board and money collected under the Chiropractic Physician Practice Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the chiropractic fund.

C. Payments out of the chiropractic fund shall be made on vouchers issued and signed by the superintendent of regulation and licensing upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department of finance and administration.

D. All amounts paid into the chiropractic fund shall be subject to the order of the board and shall only be used for the purpose of meeting necessary expenses incurred in the performance of the purposes of the Chiropractic Physician Practice Act, the duties imposed by that act and the promotion of chiropractic education and standards in this state. All money unused at the end of the fiscal year shall remain in the chiropractic fund for use in accordance with the provisions of the Chiropractic Physician Practice Act to further its purpose.

E. All funds that may have accumulated to the credit of the board under any previous act shall be continued for use by the board in the administration of the Chiropractic Physician Practice Act.

F. The board shall, by rule, designate a portion of the annual licensing fee for the exclusive purposes of investigating and funding hearings regarding complaints against doctors of chiropractic.

History: 1953 Comp., § 67-3-15, enacted by Laws 1968, ch. 3, § 7; 1993, ch. 198, § 7; 2006, ch. 18, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 2006 amendment, effective May 17, 2006, deleted the former requirements in Subsection C that the secretary of the board approve payments out of the chiropractic fund and required that the superintendent of regulation and licensing approve the payments and deleted former

Subsection F, which required the treasurer of the board to give bond.

The 1993 amendment, effective June 18, 1993, inserted "Physician" in the first sentence of Subsection B, in the first and second sentences of Subsection D, and in Subsection E; deleted "chiropractic" preceding "board" in Subsection E; added Subsection G; and made minor stylistic changes in Subsections D and E.

61-4-8. License without examination. (Repealed effective July 1, 2028.)

A. The board shall issue a license without examination to a chiropractic physician who is a graduate of a standard college of chiropractic and has been licensed in another licensing jurisdiction if the applicant holds a valid and unrestricted license, is in good standing with the licensing board of the other licensing jurisdiction and has practiced as a chiropractor for at least two years immediately prior to application in New Mexico. The board shall, as soon as practicable but no later than thirty days after a person files an application for a license accompanied by any required fees, process the application and issue the expedited license in accordance with Section 61-1-31.1

NMSA 1978. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal.

B. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: 1953 Comp., § 67-3-16, enacted by Laws 1968, ch. 3, § 8; 2022, ch. 39, § 25.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the chiropractic board shall issue an expedited license to an applicant without an examination if the person has been duly licensed as a chiropractor in another licensing jurisdiction and is in good standing with the licensing board in that licensing jurisdiction, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the

list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are needed; added new subsection designation "A." and deleted former Subsections A through C; in Subsection A, after "The board", deleted "may, in its discretion" and added "shall", after "license without examination to a", deleted "chiropractor who has been licensed in any state, territory or foreign jurisdiction and" and added "chiropractic physician", after "standard college of chiropractic", added "and has been licensed in another licensing jurisdiction", and after "if", added the remainder of the subsection; and added a new Subsection B.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 61, 67, 68.

61-4-9. Privileges and obligations. (Repealed effective July 1, 2028.)

A. Licensed chiropractic physicians shall observe all health and hygiene laws and regulations of the state and its political subdivisions and shall report births and deaths to the proper authorities. Reports rendered by chiropractors shall be accepted by officers of departments or agencies to which they are made.

B. It is the purpose of the Chiropractic Physician Practice Act to grant to chiropractors the right to practice chiropractic as taught and practiced in standard colleges of chiropractic and to entitle the holder of a license the right to diagnose, palpate and treat injuries, deformities and other physical or mental conditions relating to the basic concepts of chiropractic by use of any methods provided in the Chiropractic Physician Practice Act, as provided in rules and regulations established and monitored by the board, but excluding operative surgery and prescription or use of controlled or dangerous drugs as provided in rules and regulations established and monitored by the board.

History: 1953 Comp., § 67-3-17, enacted by Laws 1968, ch. 3, § 9; 1993, ch. 198, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

Cross references. — For incorporation of chiropractors under Professional Corporation Act, see 53-6-1 NMSA 1978 et seq.

The 1993 amendment, effective June 18, 1993, inserted subsection designations; substituted "chiropractic physicians" for "chiropractors" in the first sentence of Subsection A; and in Subsection B, inserted "Physician" near the beginning and substituted the language beginning "Physician Practice Act, as provided in rules" for "Practice Act, such as by application of manipulative, manual and

mechanical means, including all natural agencies imbued with the healing act, such as food, water, heat, cold, electricity and drugless appliances, but excluding operative surgery and prescription or use of drugs or medicine, except that X ray, analytical instruments and routine laboratory procedures, not involving the penetration of human tissues except for blood testing, may be used for the purpose of examination" at the end.

ANNOTATIONS

Chiropractic as healing art. — Restriction of Section 59-18-19 (now Section 59A-22-32) NMSA 1978, prohibiting discrimination against an insured in the choice of

a practitioner of the healing arts, applies to chiropractors. 1972 Op. Att'y Gen. No. 72-58.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 44, 132.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 A.L.R. 630.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056.

Scope of practice of chiropractic, 16 A.L.R.4th 58.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7.

61-4-9.1. Advanced practice chiropractic certification registry established. (Repealed effective July 1, 2028.)

The board shall establish by rule the advanced practice chiropractic certification registry. A chiropractic physician authorized by the board to use the title "certified advanced practice chiropractic physician" shall have prescriptive authority for therapeutic and diagnostic purposes as authorized by statute. Only a chiropractic physician included in the advanced practice chiropractic certification registry may use the title certified advanced practice chiropractic physician, and it is unlawful for a person to use the certified advanced practice chiropractic physician title unless the person is included in the advanced practice chiropractic certification registry. The advanced practice chiropractic certification registry shall include a chiropractic physician who applies for the designation and:

- A. holds a chiropractic license in good standing;
- B. has completed three years of post-graduate clinical chiropractic practice or equivalent clinical experience as established by the board;
- C. has an advanced practice chiropractic certification by a nationally recognized credentialing agency providing credentialing and demonstrated competency by examination and additionally, after December 31, 2012, successful completion of a graduate degree in a chiropractic clinical practice specialty;
- D. has completed a minimum of ninety clinical and didactic contact course hours in pharmacology, pharmacognosy, medication administration and toxicology certified by an examination from an institution of higher education approved by the board and the New Mexico medical board; and
- E. has completed annual continuing education for advanced practice chiropractic physicians as set by the board.

History: Laws 2008, ch. 44, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

Effective dates. — Laws 2008, ch. 44 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

ANNOTATIONS

Approval of educational requirements. — Where the board of chiropractic examiners adopted a new rule that established additional training requirements for

certified advanced practice chiropractic physicians that was not approved by the medical board and the medical board objected to the additional requirements because the hours did not appear to be sufficient, the adoption of the additional training requirements without medical board approval did not violate 61-4-9.1(D) NMSA 1978 because 61-4-9.1(D) NMSA 1978 requires the medical board to approve the institutions that provide the required educational hours to an advanced practice chiropractic physician, but it does not give the medical board authority to decline any other type of approval. *Int'l Chiropractors Ass'n v. N.M. Bd. of Chiropractic Exam'rs*, 2014-NMCA-046.

61-4-9.2. Certified advanced practice chiropractic physician authority defined. (Repealed effective July 1, 2028.)

A. A certified advanced practice chiropractic physician may prescribe, administer and dispense herbal medicines, homeopathic medicines, over-the-counter drugs, vitamins, minerals, enzymes, glandular products, protomorphogens, live cell products, gerovital, amino acids, dietary supplements, foods for special dietary use, bioidentical hormones, sterile water, sterile saline, sarapin or its generic, caffeine, procaine, oxygen, epinephrine and vapocoolants.

B. A formulary that includes all substances listed in Subsection A of this section, including compounded preparations for topical and oral administration, shall be developed and approved by the board. A formulary for injection that includes the substances in Subsection A of this section that are within the scope of practice of the certified advanced practice chiropractic physician

shall be developed and approved by the board. Dangerous drugs or controlled substances, drugs for administration by injection and substances not listed in Subsection A of this section shall be submitted to the board of pharmacy and the New Mexico medical board for approval.

History: Laws 2008, ch. 44, § 2; 2009, ch. 260, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "homeopathic medicines" added "over-the-counter drugs", after "glandular products" deleted "naturally derived substances" and deleted the last sentence, which provided that a formulary shall be developed by the board; and added Subsection B.

ANNOTATIONS

Approval of formulary. — The board of chiropractic examiners is statutorily required to submit its formularies to the board of pharmacy and the medical board for prior approval to the extent the formularies include

dangerous drugs, as defined in the New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article 1 NMSA 1978, which include drugs for administration by injection. *Int'l Chiropractors Ass'n v. N.M. Bd. of Chiropractic Exam'rs*, 2014-NMCA-046.

Where the board of chiropractic examiners approved an advanced practice chiropractic formulary that included minerals and additional drugs to be administered by injection without obtaining the prior approval of the board of pharmacy and the medical board, the formulary violated the requirement of 61-4-9.2(B) NMSA 1978 that the formulary receive prior approval from the board of pharmacy and the medical board. *Int'l Chiropractors Ass'n v. N.M. Bd. of Chiropractic Exam'rs*, 2014-NMCA-046.

61-4-9.3. Use of chiropractic name limited. (Repealed effective July 1, 2028.)

The terms "chiropractor", "chiropractic physician" or "chiropractic" may be used only by persons licensed pursuant to the Chiropractic Physician Practice Act.

History: Laws 2008, ch. 44, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

Effective dates. — Laws 2008, ch. 44 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

61-4-10. Refusal, suspension or revocation of license. (Repealed effective July 1, 2028.)

A. The board may refuse to issue or may suspend or revoke any license or may censure, reprimand, fine or place on probation and stipulation any licensee in accordance with the procedures as contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] upon the grounds that the licensee or applicant:

- (1) is convicted of a felony. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of such conviction;
- (2) is guilty of fraud or deceit in procuring or attempting to procure a license in the chiropractic profession or in connection with applying for or procuring license renewal;
- (3) is guilty of incompetence;
- (4) is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render the licensee or applicant unfit to practice chiropractic;
- (5) is guilty of practicing or attempting to practice under an assumed name or fails to use the title "doctor of chiropractic", chiropractic physician or the initials "D.C." in connection with the licensee's or applicant's practice or advertisements;
- (6) is guilty of failing to comply with any of the provisions of the Chiropractic Physician Practice Act or rules and regulations promulgated by the board and filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978];
- (7) is guilty of willfully or negligently practicing beyond the scope of chiropractic practice as defined in the Chiropractic Physician Practice Act;
- (8) is guilty of advertising by means of knowingly false statements;
- (9) has been declared mentally incompetent by regularly constituted authorities or is manifestly incapacitated to practice chiropractic;

(10) advertises or attempts to attract patronage in any unethical manner prohibited by the rules and regulations of the board;

(11) is guilty of obtaining any fee by fraud or misrepresentation;

(12) is guilty of making false or misleading statements regarding the licensee's or applicant's skill or the efficacy or value of treatment or remedy prescribed or administered by the licensee or applicant or at the licensee's or applicant's direction;

(13) is guilty of aiding or abetting the practice of chiropractic by a person not licensed by the board;

(14) has incurred a prior suspension or revocation in another state where the suspension or revocation of a license to practice chiropractic was based upon acts by the licensee similar to acts described in this section and by board rules promulgated pursuant to Paragraph (6) of this subsection. A certified copy of the record of suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof;

(15) is guilty of making a false, misleading or fraudulent claim; or

(16) is guilty of unprofessional conduct that includes but is not limited to the following:

(a) procuring, aiding or abetting a criminal abortion;

(b) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;

(c) willfully or negligently divulging a professional confidence;

(d) conviction of any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;

(e) impersonating another person licensed in the practice of chiropractic or permitting or allowing any person to use the licensee's or applicant's license;

(f) gross negligence in the practice of chiropractic;

(g) fee splitting;

(h) conduct likely to deceive, defraud or harm the public;

(i) repeated similar negligent acts;

(j) employing abusive billing practices;

(k) failure to report to the board any adverse action taken against the licensee or applicant by: 1) another licensing jurisdiction; 2) any peer review body; 3) any health care entity; 4) any governmental agency; or 5) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as provided in this section;

(l) failure to report to the board surrender of a license or other authorization to practice chiropractic in another state or jurisdiction or surrender of membership on any chiropractic staff or in any chiropractic or professional association or society following, in lieu of, and while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as provided in this section;

(m) failure to furnish the board, its investigators or representatives with information requested by the board;

(n) abandonment of patients;

(o) failure to adequately supervise, as provided by board regulation, a chiropractic assistant or technician or professional licensee who renders care;

(p) intentionally engaging in sexual contact with a patient other than the licensee's or applicant's spouse during the doctor-patient relationship; and

(q) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public.

B. The board may at its discretion hire investigators or issue investigative subpoenas for the purpose of investigating complaints made to the board regarding chiropractic physicians.

C. All written and oral communication made by any person to the board or an agent of the board relating to actual or potential disciplinary action, including complaints made to the board, are confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]; provided that all information

contained in a complaint file is public information and subject to disclosure when the board acts on a complaint.

D. Licensees shall bear all costs of disciplinary proceedings unless exonerated.

History: 1953 Comp., § 67-3-18, enacted by Laws 1968, ch. 3, § 10; 1971, ch. 67, § 1; 1981, ch. 235, § 1; 1993, ch. 198, § 9; 2006, ch. 18, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 2006 amendment, effective May 17, 2006, added the provision in Subsection A that the board may censure, reprimand, fine or place on probation and suspension any licensees; and added Subsection C to provide that communications made by any person to the board relating to disciplinary action are confidential and not public records for purposes of the Inspection of Public Records Act and that all information in a complaint file is public information and subject to disclosure when the board acts on a complaint.

The 1993 amendment, effective June 18, 1993, designated all the provisions of this section as Subsection A; in Subsection A, redesignated former Subsections A to O as Paragraphs (1) to (15) and added Paragraph (16), deleted "provided" preceding "a copy" in Paragraph (1), inserted "chiropractic physician" in Paragraph (5), inserted "Physician" in Paragraphs (6) and (7), and substituted "another state" for "a sister state" and "Paragraph (6) of this subsection" for "subsection F of this section; provided" in Paragraph (14); and added Subsections B and C.

ANNOTATIONS

Expert testimony in disciplinary proceedings. — Because the board of chiropractic examiners has a level of expertise unlike that of a typical jury, expert testimony is not required to establish a standard of care for chiropractors. *Darr v. Village of Tularosa*, 1998-NMCA-104, 125 N.M. 394, 962 P.2d 640, cert. denied, 125 N.M. 654, 964 P.2d 818.

"Detrimental conduct" meriting suspension. — Although there was not substantial evidence to support the

board's findings that respondent failed to keep his patient informed as to the possible dangers of his treatment and then failed to refer her to a more qualified physician, other findings were supported by substantial evidence and merited the board's finding that respondent violated the applicable standard of care and that his license should be suspended. *Darr v. Village of Tularosa*, 1998-NMCA-104, 125 N.M. 394, 962 P.2d 640, cert. denied, 125 N.M. 654, 964 P.2d 818.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 100.

Competency of physician or surgeon, of school or practice other than that to which defendant belongs, to testify in malpractice case, 85 A.L.R.2d 1022.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 A.L.R.4th 248.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

Liability of osteopath for medical malpractice, 73 A.L.R.4th 24.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 A.L.R.4th 273.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 38 to 42.

61-4-11. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Chiropractic Physician Practice Act.

History: 1953 Comp., § 67-3-18.1, enacted by Laws 1974, ch. 78, § 13; 1993, ch. 198, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, inserted "Physician".

61-4-12. Penalties. (Repealed effective July 1, 2028.)

A. Each of the following acts constitutes a misdemeanor punishable upon conviction by a fine of not less than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000) or by imprisonment not to exceed one year, or both:

- (1) practice of chiropractic or an attempt to practice chiropractic without a license;
- (2) obtaining or attempting to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentation;
- (3) willfully falsifying any oath or affirmation required by the Chiropractic Physician Practice Act;

- (4) practicing or attempting to practice under an assumed name; or
- (5) advertising or attempting to attract patronage in any unethical manner prohibited by the rules and regulations of the board.

B. Any second violation of the act constitutes a fourth degree felony.

History: 1953 Comp., § 67-3-19, enacted by Laws 1968, ch. 3, § 11; 1975, ch. 176, § 3; 1993, ch. 198, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, designated all of the provisions of this section as Subsection A and redesignated former Subsections A to E as Paragraphs (1) to (5) of that subsection; in Subsection A, substituted "or more than one thousand dollars (\$1000)" for "nor more than five hundred dollars (\$500)" and "one

year" for "six months" in the introductory paragraph, inserted "Physician" in Paragraph (3), and made a minor stylistic change; and added Subsection B.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28, 53 to 57.

61-4-13. Annual renewal of license; fee; notice. (Repealed effective July 1, 2028.)

A. Except as provided in Section 61-1-34 NMSA 1978, a person licensed to practice chiropractic in this state shall, on or before July 1 of each year, pay to the board an annual fee set by regulation and shall submit proof of completion of continuing education requirements as required by the board. The board shall send written notice to every person holding a license prior to June 1 of each year, directed to the last known address of the licensee, notifying the licensee that it is necessary to pay the renewal fee as provided in the Chiropractic Physician Practice Act. Proper forms shall accompany the notice, upon which forms the licensee shall make application for the renewal of the license. The licensee is responsible for renewal of the license even if the licensee does not receive the renewal notice.

B. The board shall establish a schedule of reasonable fees for applications, licenses, renewals, placement or inactive status and administrative fees.

History: 1953 Comp., § 67-3-20, enacted by Laws 1968, ch. 3, § 12; 1977, ch. 109, § 2; 1978, ch. 114, § 2; 1983, ch. 187, § 4; 1993, ch. 198, § 12; 2020, ch. 6, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, deleted "Any" and added "Except as provided in Section 61-1-34 NMSA 1978, a".

The 1993 amendment, effective June 18, 1993, designated the provisions of this section as Subsection A; in

Subsection A, deleted "in an amount not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) for a certificate of renewal for his license to practice chiropractic" following "regulation" in the first sentence, inserted "Physician" in the second sentence, and added the final sentence; and added Subsection B.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 26, 44, 56.

61-4-14. Failure to renew; cancellation; reinstatement; permissive temporary cancellation. (Repealed effective July 1, 2028.)

Any licensee who fails to comply with the requirements for renewal as set forth in Section 12 [61-4-13 NMSA 1978], shall, upon order of the board, forfeit his right to practice chiropractic in this state and his license and any certificates of renewal shall be cancelled. The board may reinstate him upon payment of all fees or penalties due and upon the presentation of evidence of attendance at educational programs as may be provided by rules and regulations of the board. Any person licensed to practice chiropractic in this state who desires to withdraw from active practice in this state may apply to the board for a temporary suspension of his license with the right to renew and reinstate his license upon a showing that he has paid his annual license renewal fee on or before the first day of July of each year, provided that no suspension shall be granted for a period of less than one year.

History: 1953 Comp., § 67-3-21, enacted by Laws 1968, ch. 3, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 79.
70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 38, 52.

61-4-15. Exemptions. (Repealed effective July 1, 2028.)

The Chiropractic Physician Practice Act does not apply to:

- A. any commissioned officer of the armed forces of the United States in the discharge of his official duties;
- B. a chiropractor who is legally qualified to practice in the state or territory in which he resides, when in actual consultation with a licensed chiropractor of this state; or
- C. any bona fide student of any standard chiropractic college chiropractically analyzing and adjusting the human body under supervision of a licensed chiropractor.

History: 1953 Comp., § 67-3-22, enacted by Laws 1968, ch. 3, § 14; 1993, ch. 198, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, inserted "Physician" in the introductory paragraph; deleted

former Subsection D, exempting chiropractors residing on the border of an adjacent state; and deleted the former final paragraph authorizing regularly licensed physicians or surgeons who procure licenses to practice chiropractic to practice medicine, surgery and chiropractic.

61-4-16. Existing licensees. (Repealed effective July 1, 2028.)

Any person licensed as a chiropractor under any prior law of this state whose license is valid on the effective date of the Chiropractic Physician Practice Act shall be deemed as licensed under the provisions of the Chiropractic Physician Practice Act.

History: 1953 Comp., § 67-3-23, enacted by Laws 1968, ch. 3, § 15; 1993, ch. 198, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-4-17 NMSA 1978.

Compiler's notes. — The "effective date of the Chiropractic Practice Act", referred to in this section, is February 9, 1968, which is the effective date of Laws 1968, ch. 3.
The 1993 amendment, effective June 18, 1993, inserted "Physician" in two places.

61-4-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The chiropractic board is terminated on July 1, 2027 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Chiropractic Physician Practice Act until July 1, 2028. Effective July 1, 2028, the Chiropractic Physician Practice Act is repealed.

History: 1978 Comp., § 61-4-17, enacted by Laws 1979, ch. 77, § 2; 1981, ch. 241, § 18; 1985, ch. 87, § 3; 1991, ch. 189, § 6; 1997, ch. 46, § 4; 2003, ch. 428, § 3; 2009, ch. 96, § 3; 2015, ch. 119, § 3; 2021, ch. 50, § 2.

The 2021 amendment, effective June 18, 2021, extended the sunset date for the chiropractic board, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the chiropractic board to July 1, 2021, and the repeal date to July 1, 2022.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, substituted "the Chiropractic Physician Practice Act" for "Chapter 61, Article 4 NMSA 1978" throughout the section, and in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004".

The 1997 amendment, effective June 20, 1997, substituted "2003" for "1997", substituted "2004" for "1998", and substituted "July 1, 2004, Chapter 61, Article 4 NMSA 1978" for "July 1, 1998 Article 4 of Chapter 61, NMSA 1978".

The 1991 amendment, effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

ARTICLE 5

Dentistry

(Repealed by Laws 1994, ch. 55, § 41.)

61-5-1 to 61-5-34. Repealed.

Repeals. — Laws 1994, ch. 55, § 41 repealed 61-5-1 to 61-5-34 NMSA 1978, as enacted by Laws 1971, ch. 125, §§ 1, 3, 5, 12, 14 to 16, and 18 and 21; Laws 1974, ch. 78, § 14; Laws 1981, ch. 229, §§ 1 to 11; and Laws 1987, ch. 181, § 1; and as last amended by Laws 1976 (S.S.), ch. 2, § 1; Laws 1979, ch. 120, § 1; Laws 1981, ch. 230, §§ 1, 2, 4, and 6 to 8;

Laws 1983, ch. 200, §§ 1 and 2; Laws 1985, ch. 130, § 1; and Laws 1991, ch. 189, §§ 7 and 8, relating to dentistry, effective July 1, 1994. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 61-5A-1 to 61-5A-41 NMSA 1978.

ARTICLE 5A

Dental Health Care

Sec.

- 61-5A-1. Short title. (Repealed effective July 1, 2024.)
- 61-5A-2. Repealed.
- 61-5A-3. Definitions. (Repealed effective July 1, 2024.)
- 61-5A-4. Scope of practice. (Repealed effective July 1, 2024.)
- 61-5A-5. License required; exemptions. (Repealed effective July 1, 2024.)
- 61-5A-5.1. Non-dentist owner; employing or contracting for dental services. (Repealed effective July 1, 2024.)
- 61-5A-6. Certification of dental assistants, expanded-function dental auxiliaries and community dental health coordinators. (Repealed effective July 1, 2024.)
- 61-5A-6.1. Expanded-function dental auxiliary; certification. (Repealed effective July 1, 2024.)
- 61-5A-7. Dental and dental hygiene districts created. (Repealed effective July 1, 2024.)
- 61-5A-8. Board created. (Repealed effective July 1, 2024.)
- 61-5A-9. Committee created. (Repealed effective July 1, 2024.)
- 61-5A-10. Powers and duties of the board and committee. (Repealed effective July 1, 2024.)
- 61-5A-11. Ratification of committee recommendations. (Repealed effective July 1, 2024.)
- 61-5A-12. Dentists; requirements for licensure; specialty license. (Repealed effective July 1, 2024.)
- 61-5A-13. Dental hygienist licensure. (Repealed effective July 1, 2024.)
- 61-5A-13.1. Dental therapist licensure; requirements. (Repealed effective July 1, 2024.)
- 61-5A-13.2. Dental therapy; scope of practice; supervision. (Repealed effective July 1, 2024.)
- 61-5A-13.3. Dental therapy; practice environments. (Repealed effective July 1, 2024.)
- 61-5A-14. Temporary licensure; expedited licensure. (Repealed effective July 1, 2024.)
- 61-5A-14.1. Public-service licensure. (Repealed effective July 1, 2024.)

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- 61-5A-15. Content of licenses and certificates; display of licenses and certificates. (Repealed effective July 1, 2024.)
- 61-5A-16. License and certificate renewals. (Repealed effective July 1, 2024.)
- 61-5A-17. Retirement and inactive status; reactivation. (Repealed effective July 1, 2024.)
- 61-5A-18. Practicing without a license; penalty. (Repealed effective July 1, 2024.)
- 61-5A-19. Reinstatement of revoked or suspended license. (Repealed effective July 1, 2024.)
- 61-5A-20. Fees. (Repealed effective July 1, 2024.)
- 61-5A-21. Disciplinary proceedings; application of Uniform Licensing Act. (Repealed effective July 1, 2024.)
- 61-5A-22. Anesthesia administration. (Repealed effective July 1, 2024.)
- 61-5A-23. Reporting of settlements and judgments; professional review actions; immunity from civil damages. (Repealed effective July 1, 2024.)
- 61-5A-24. Injunction to stop unlicensed dental or dental hygiene practice. (Repealed effective July 1, 2024.)
- 61-5A-25. Protected actions and communications. (Repealed effective July 1, 2024.)
- 61-5A-26. Fund established. (Repealed effective July 1, 2024.)
- 61-5A-27. Criminal Offender Employment Act. (Repealed effective July 1, 2024.)
- 61-5A-28. Temporary provision. (Repealed effective July 1, 2024.)
- 61-5A-29. Licensure or certification under prior law. (Repealed effective July 1, 2024.)
- 61-5A-30. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

61-5A-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 5A NMSA 1978 may be cited as the "Dental Health Care Act".

History: Laws 1994, ch. 55, § 1; 2007, ch. 63, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2007 amendment, effective June 15, 2007, changed the statutory reference to the act.

ANNOTATIONS

Former dentistry act not monopolistic. — Laws 1919, ch. 35, regulating dentistry, was not an attempt to confer a monopoly upon those able to comply with its conditions, as the conditions were just and reasonable. *State v. Culdice*, 1929-NMSC-007, 33 N.M. 641, 275 P. 371.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of dentist for injury by X-ray, 41 A.L.R. 385.

Kind or character of treatment which may be given by one licensed as dentist, 86 A.L.R. 625.

Newspapers, magazines or radio broadcasting stations, practice of dentistry through, 114 A.L.R. 1506.

Dentist as physician or surgeon within statutes, 115 A.L.R. 261.

Dental hygienists, constitutionality, construction and application of statute regulating, 11 A.L.R.2d 724.

Regulation of prosthetic dentistry, 45 A.L.R.2d 1243.

Malpractice: duty and liability of anesthetist, 53 A.L.R.2d 142, 49 A.L.R.4th 63.

Liability of dentist for extending operation or treatment beyond that expressly authorized, 56 A.L.R.2d 695.

Duty and liability of dentist to patient, 11 A.L.R.4th 748.

Liability for dental malpractice in provision or fitting of dentures, 77 A.L.R.4th 222.

Liability of orthodontist for malpractice, 81 A.L.R.4th 632.

Coverage under medical and health insurance plans for services performed by dentists, oral surgeons, and orthodontists, 43 A.L.R.5th 657.

61-5A-2. Repealed.

Repeals. — Laws 2019, ch. 107, § 18 repealed 61-5A-2 NMSA 1978, as enacted by Laws 1994, ch. 55, § 2, relating to purpose, effective June 14, 2019. For provisions

of former section, see the 2018 NMSA 1978 on *NMOne Source.com*.

61-5A-3. Definitions. (Repealed effective July 1, 2024.)

As used in the Dental Health Care Act:

A. "assessment" means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment;

B. "board" means the New Mexico board of dental health care;

C. "certified dental assistant" means an individual certified by the dental assisting national board;

D. "collaborative dental hygiene practice" means a New Mexico licensed dental hygienist practicing according to Subsections D through G of Section 61-5A-4 NMSA 1978;

E. "committee" means the New Mexico dental hygienists committee;

F. "community dental health coordinator" means a dental assistant, a dental hygienist or other trained personnel certified by the board as a community dental health coordinator to provide educational, preventive and limited palliative care and assessment services working collaboratively under the general supervision of a licensed dentist in settings other than traditional dental offices and clinics;

G. "consulting dentist" means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee;

H. "dental hygiene-focused assessment" means the documentation of existing oral and relevant system conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment;

I. "dental assistant certified in expanded functions" means a dental assistant who meets specific qualifications set forth by rule of the board;

J. "dental hygienist" means an individual who has graduated and received a degree from a dental hygiene educational program that is accredited by the commission on dental accreditation, that provides a minimum of two academic years of dental hygiene curriculum and that is an institution of higher education; and "dental hygienist" means, except as the context otherwise requires, an individual who holds a license to practice dental hygiene in New Mexico;

K. "dental laboratory" means any place where dental restorative, prosthetic, cosmetic and therapeutic devices or orthodontic appliances are fabricated, altered or repaired by one or more persons under the orders and authorization of a dentist;

L. "dental technician" means an individual, other than a licensed dentist, who fabricates, alters, repairs or assists in the fabrication, alteration or repair of dental restorative, prosthetic, cosmetic and therapeutic devices or orthodontic appliances under the orders and authorization of a dentist;

M. "dental therapist" means an individual who:

- (1) is licensed as a dental hygienist;
- (2) has provided, in accordance with board rules, evidence to the board that the individual has graduated and received a degree from a dental therapy education program that is accredited by the commission on dental accreditation; and
- (3) except as the context otherwise requires, is licensed to practice dental therapy in the state;

N. "dental therapy post-graduate clinical experience" means advanced training in patient management and technical competency:

- (1) that is approved by the board, based on educational and supervisory criteria developed by the board and established by board rule;
- (2) that is sanctioned by a regionally accredited educational institution with a program accredited by the commission on dental accreditation;
- (3) that consists of two thousand hours of advanced training or, if the dental therapy educational program graduate has five years of experience as a dental hygienist, one thousand five hundred hours of advanced training; and
- (4) for which the dental therapist may have been compensated;

O. "dental therapy practice agreement" means a contract between a supervising dentist and a dental therapist that outlines the parameters of care, level of supervision and protocols to be followed while performing dental therapy procedures on patients under the supervising dentist's and dental therapist's care;

P. "dentist" means an individual who has graduated and received a degree from a school of dentistry that is accredited by the commission on dental accreditation and, except as the context otherwise requires, who holds a license to practice dentistry in New Mexico;

Q. "direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

- (1) is physically present throughout the performance of the act;
- (2) orders, controls and accepts full professional responsibility for the act performed; and
- (3) evaluates and approves the procedure performed before the patient departs the care setting;

R. "expanded-function dental auxiliary" means a dental assistant, dental hygienist or other dental practitioner that has received education beyond that required for licensure or certification in that individual's scope of practice and that has been certified by the board as an expanded-function dental auxiliary who works under the direct supervision of a dentist;

S. "federally qualified health center" means a health facility that the United States department of health and human services has deemed to qualify for federal funds as a federally qualified health center;

T. "federally qualified health center look-alike facility" means a health facility that the federal centers for medicare and medicaid services certifies as a federally qualified health center look-alike facility;

U. "general supervision" means the authorization by a dentist of the procedures to be used by a dental therapist, community dental health coordinator, dental hygienist, dental assistant or dental student and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by rule of the board;

V. "indirect supervision" means that a dentist, or in certain settings, a dental therapist, dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental therapist, dental hygienist, dental assistant or dental student;

W. "long-term care facility" means a nursing home licensed by the department of health to provide intermediate or skilled nursing care;

X. "non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services;

Y. "nonprofit community dental organization" means a community-supported entity that:

(1) provides clinical dental services primarily to low-income patients or medicaid recipients; and

(2) has demonstrated to the taxation and revenue department that it has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered;

Z. "palliative procedures" means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems; and

AA. "teledentistry" means a dentist's, dental hygienist's or dental therapist's use of electronic information, imaging and communication technologies, including interactive audio, video and data communications as well as store-and-forward technologies, to provide and support dental health care delivery, diagnosis, consultation, treatment, transfer of dental data and education.

History: Laws 1994, ch. 55, § 3; 2003, ch. 409, § 2; 2011, ch. 113, § 3; 2019, ch. 107, § 1; 2021, ch. 63, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

Cross references. — For Section 501(c)(3) of the Internal Revenue Code of 1986, see 26 U.S.C. § 501(c)(3).

The 2021 amendment, effective June 18, 2021, revised the definition of "teledentistry", as used in the Dental Health Care Act; and in Subsection AA, after "means", deleted "a dentist's use of health information technology in real time to provide limited diagnostic and treatment planning services in cooperation with another dentist, a dental therapist, a dental hygienist, a community dental health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist, dental therapist or dentist" and added the remainder of the subsection.

The 2019 amendment, effective June 14, 2019, defined "dental therapist", "dental therapy post-graduate clinical experience", "dental therapy practice agreement", "federally qualified health center", "federally qualified health center look-alike facility", "long-term care facility", "nonprofit community dental organization", and revised the definitions of certain terms, as used in the Dental Health Care Act; added new Subsections M through O and redesignated former Subsections M through O as Subsections P through R, respectively; added new

Subsections S and T and redesignated former Subsections P and Q as Subsections U and V, respectively; in Subsection U, after "procedures to be used by a", added "dental therapist, community dental health coordinator"; in Subsection V, after "in certain settings, a", added "dental therapist", and after "performed by a", added "dental therapist"; added new Subsection W and redesignated former Subsection R as Subsection X; added new Subsection Y and redesignated former Subsections S and T as Subsections Z and AA, respectively; and in Subsection AA, after "in cooperation with another dentist," added "a dental therapist", and after "dental hygienist," added "dental therapist".

The 2011 amendment, effective June 17, 2011, added definitions of "community dental health coordinator", "dental hygiene-focused assessment", "direct supervision", "palliative procedures" and "teledentistry".

The 2003 amendment, effective June 20, 2003, added present Subsections A, D and F, and redesignated the remaining subsections accordingly; rewrote present Subsections H, I, J and K; inserted "at a time the dentist is not physically present" following "diagnosis and treatment plan" near the end of present Subsection L; inserted "or in certain settings a dental hygienist or dental assistant certified in expanded functions" following "means that a dentist" near the beginning of present Subsection M; and added present Subsection N.

61-5A-4. Scope of practice. (Repealed effective July 1, 2024.)

A. As used in the Dental Health Care Act, "practice of dentistry" means:

(1) the diagnosis, treatment, correction, change, relief, prevention, prescription of remedy, surgical operation and adjunctive treatment for any disease, pain, deformity, deficiency, injury, defect, lesion or physical condition involving both the functional and aesthetic aspects of the teeth, gingivae, jaws and adjacent hard and soft tissue of the oral and maxillofacial regions, including the prescription or administration of any drug, medicine, biologic, apparatus, brace, anesthetic or other therapeutic or diagnostic substance or technique by an individual or the individual's agent or employee gratuitously or for any fee, reward, emolument or any other form of compensation whether direct or indirect;

(2) representation of an ability or willingness to do any act mentioned in Paragraph (1) of this subsection;

(3) the review of dental insurance claims for therapeutic appropriateness of treatment, including but not limited to the interpretation of radiographs, photographs, models, periodontal records and narratives;

(4) the offering of advice or authoritative comment regarding the appropriateness of dental therapies, the need for recommended treatment or the efficacy of specific treatment modalities for other than the purpose of consultation to another dentist; or

(5) with specific reference to the teeth, gingivae, jaws or adjacent hard or soft tissues of the oral and maxillofacial region in living persons, to propose, agree or attempt to do or make an examination or give an estimate of cost with intent to, or undertaking to:

(a) perform a physical evaluation of a patient in an office or in a hospital, clinic or other medical or dental facility prior to, incident to and appropriate to the performance of any dental services or oral or maxillofacial surgery;

(b) perform surgery, an extraction or any other operation or to administer an anesthetic in connection therewith;

(c) diagnose or treat a condition, disease, pain, deformity, deficiency, injury, lesion or other physical condition;

(d) correct a malposition;

(e) treat a fracture;

(f) remove calcareous deposits;

(g) replace missing anatomy with an artificial substitute;

(h) construct, make, furnish, supply, reproduce, alter or repair an artificial substitute or restorative or corrective appliance or place an artificial substitute or restorative or corrective appliance in the mouth or attempt to adjust it;

(i) give interpretations or readings of dental radiographs;

(j) provide limited diagnostic and treatment planning via teledentistry; or

(k) do any other remedial, corrective or restorative work.

B. As used in the Dental Health Care Act, "the practice of dental hygiene" means the application of the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services under the general supervision of a dentist. A dental hygienist in a collaborative practice may perform the procedures listed in this section without general supervision while the hygienist is in a cooperative working relationship with a consulting dentist, pursuant to rules promulgated by the board and the committee. "The practice of dental hygiene" includes:

(1) prophylaxis, which is the removal of plaque, calculus and stains from the tooth structures as a means to control local irritational factors;

(2) removing diseased crevicular tissue and related nonsurgical periodontal procedures;

(3) except in cases where a tooth exhibits cavitation of the enamel surface, assessing without a dentist's evaluation whether the application of pit and fissure sealants is indicated;

(4) except in cases where a tooth exhibits cavitation of the enamel surface, applying pit and fissure sealants without mechanical alteration of the tooth;

(5) applying fluorides and other topical therapeutic and preventive agents;

(6) exposing and assessing oral radiographs for abnormalities;

(7) screening to identify indications of oral abnormalities;

(8) performing dental hygiene-focused assessments;

(9) assessing periodontal conditions; and

(10) such other closely related services as permitted by the rules of the committee and the board.

C. In addition to performing dental hygiene as defined in Subsection B of this section, a dental hygienist may apply preventive topical fluorides and remineralization agents without supervision in public and community medical facilities, schools, hospitals, long-term care facilities and such other settings as the committee may determine by rule ratified by the board, so long as the dental hygienist's license is not restricted pursuant to the Impaired Dentists and Dental Hygienists Act [61-5B-1 to 61-5B-11 NMSA 1978].

D. In addition to performing dental hygiene as defined in Subsection B of this section, dental hygienists who have met the criteria as the committee shall establish and the board shall ratify may administer local anesthesia under indirect supervision of a dentist.

E. The board may certify a dental hygienist to administer local anesthetic under the general supervision of a dentist if the dental hygienist, in addition to performing dental hygiene as defined in Subsection B of this section:

(1) has administered local anesthesia under the indirect supervision of a dentist for at least two years, during which time the dental hygienist has competently administered at least twenty cases of local anesthesia and can document this with a signed affirmation by the supervising dentist;

(2) administers local anesthetic under the written prescription or order of a dentist; and

(3) emergency medical services are available in accordance with rules promulgated by the board.

F. A dental hygienist:

(1) may prescribe, administer and dispense a fluoride supplement, topically applied fluoride or topically applied antimicrobial only when the prescribing, administering or dispensing is performed:

(a) under the supervision of a dentist;

(b) pursuant to rules the board and the committee have adopted;

(c) within the parameters of a drug formulary approved by the board in consultation with the board of pharmacy;

(d) within the parameters of guidelines established pursuant to Section 61-5A-10 NMSA 1978; and

(e) in compliance with state laws concerning prescription packaging, labeling and recordkeeping requirements; and

(2) shall not otherwise dispense dangerous drugs or controlled substances.

G. A New Mexico licensed dental hygienist may be certified for collaborative dental hygiene practice in accordance with the educational and experience criteria established collaboratively by the committee and the board.

H. An expanded-function dental auxiliary may perform the following procedures under the direct supervision of a dentist:

(1) placing and shaping direct restorations;

(2) taking final impressions, excluding those for fixed or removable prosthetics involving multiple teeth;

(3) cementing indirect and provisional restorations for temporary use;

(4) applying pit and fissure sealants without mechanical alteration of the tooth;

(5) placing temporary and sedative restorative material in hand-excavated carious lesions and unprepared tooth fractures;

(6) removal of orthodontic bracket cement; and

(7) fitting and shaping of stainless steel crowns to be cemented by a dentist.

I. An expanded-function dental auxiliary may re-cement temporary or permanent crowns with temporary cement under the general supervision of a dentist in a situation that a dentist deems to be an emergency.

J. An expanded-function dental auxiliary may perform other related functions for which the expanded-function dental auxiliary meets the training and educational standards established by the board and that are not expressly prohibited by the board.

K. For the purpose of this section, "collaborative dental hygiene practice" means the application of the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services as specified in Subsection B of this section in a cooperative working relationship with a consulting dentist, but without general supervision as set forth by the rules established and approved by both the board and the committee.

History: Laws 1994, ch. 55, § 4; 1999, ch. 292, § 1; 2003, ch. 409, § 3; 2007, ch. 63, § 2; 2011, ch. 113, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2011 amendment, effective June 17, 2011, included limited diagnostic and treatment planning via

teledentistry within the scope of the practice of dentistry; authorized dental hygienists in a collaborative practice to perform procedures listed in this section without general supervision; clarified the meaning of prophylaxis; included nonsurgical periodontal procedures, assessment of the need for pit and fissure sealants and oral radiographs

for abnormalities, and performing dental hygiene-focused assessments within the scope of the practice of dental hygiene; provided for the certification of dental hygienists to administer local anesthetic; prescribed the conditions under which fluoride and antimicrobial substances may be prescribed, administered and dispensed by dental hygienists; and specified the procedures an expanded-function dental auxiliary may perform, including re-cementing crowns and related functions for which the auxiliary is educated and trained to perform.

The 2007 amendment, effective June 15, 2007, added a new Subsection C to authorize a dental hygienist to administer fluoride and remineralization treatments without supervision in facilities specified by rule of the dental hygienists committee.

The 2003 amendment, effective June 20, 2003, added present Paragraphs A(3) and A(4) and redesignated former Paragraph A(3) as present Paragraph A(5); substituted "radiographs" for "roentgenograms" following "readings of" near the end of present Subparagraph A(5)(i); in Subsection B, substituted "hygiene" for "hygienist" following "practice of dental" near the beginning, and inserted "application of the" preceding "science of the prevention" near the middle; inserted "without mechanical alteration of the tooth" following "pit and fissure" near the middle of Paragraph B(3); deleted "preliminary" preceding "assessment of" at the beginning of Paragraph B(6); deleted "and regulations" following "permitted by the rules" near the middle of Paragraph B(7); in Subsection D, inserted "New Mexico licensed" preceding "dental hygienist" near the beginning and deleted "The board may charge a fee not to exceed one hundred fifty dollars (\$150) for each application for certification for collaborative dental hygiene practice" following "committee and the board" at the end; and in Subsection E, deleted "practice of" following "collaborative" near the beginning, inserted "practices" following "dental hygiene" near the beginning, inserted "the application of" preceding "the science of" near the beginning,

deleted "jointly" following "forth by the rules" near the end and inserted "and approved by both" preceding "the board and" near the end.

The 1999 amendment, effective June 18, 1999, added Subsections D and E.

ANNOTATIONS

Former definition of dentistry not vague. — Laws 1919, ch. 35, § 9, defining the practice of dentistry, was not too vague, indefinite and uncertain to serve as basis for a criminal information for practicing dentistry contrary to the provisions of the act, the actions complained of being within the police power of the state. *State v. Culdice*, 1929-NMSC-007, 33 N.M. 641, 275 P. 371.

Board could not permit unlicensed persons to practice dentistry. — The board could not, by rules and regulations, allow unlicensed persons to perform services which, under statutory provisions, constitute the practice of dentistry. *Family Dental Ctr. v. N.M. Bd. of Dentistry*, 97 N.M. 464, 641 P.2d 495 (1982).

Actions by unlicensed assistants held to be unlawful practice. — Unlicensed assistants performing such dental services as taking impressions and adjusting dentures constitutes the unlawful practice of dentistry. *Family Dental Ctr. v. N.M. Bd. of Dentistry*, 1982-NMSC-020, 97 N.M. 464, 641 P.2d 495.

Supervision of dental hygienist. — No services which constitute dental hygiene can be performed unless a licensed dentist is physically and immediately present in the office or building where the work is being performed, in order that the dentist can meet the statutory duty to supervise the services of the dental hygienist. 1971 Op. Att'y Gen. No. 71-121 (rendered under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 6.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 5.

61-5A-5. License required; exemptions. (Repealed effective July 1, 2024.)

A. Unless licensed to practice as a dentist under the Dental Health Care Act, no person shall:

- (1) practice dentistry;
- (2) use the title "dentist", "dental surgeon", "oral surgeon" or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dentist; or
- (3) perform any of the acts enumerated under the definition of the practice of dentistry as defined in the Dental Health Care Act.

B. The following, under the stipulations described, may practice dentistry or an area of dentistry without a New Mexico dental license:

- (1) regularly licensed physicians or surgeons are not prohibited from extracting teeth or treating any disease coming within the province of the practice of medicine;
- (2) New Mexico licensed dental hygienists and community dental health coordinators may provide those services within their scope of practice that are also within the scope of the practice of dentistry;
- (3) any dental student duly enrolled in an accredited school of dentistry recognized by the board, while engaged in educational programs offered by the school in private offices, public clinics or educational institutions within the state of New Mexico under the indirect supervision of a licensed dentist;
- (4) any dental hygiene or dental assisting student duly enrolled in an accredited school of dental hygiene or dental assisting engaged in procedures within or outside the scope of dental hygiene that are part of the curriculum of that program in the school setting and under the indirect

supervision of a faculty member of the accredited program who is a licensed dentist, dental hygienist or dental assistant certified in the procedures being taught;

(5) unlicensed persons performing for a licensed dentist merely mechanical work upon inert matter in the construction, making, alteration or repairing of any artificial dental substitute, dental restorative or corrective appliance, when the casts or impressions for the work have been furnished by a licensed dentist and where the work is prescribed by a dentist pursuant to a written authorization by that dentist;

(6) commissioned dental officers of the uniformed forces of the United States and dentists providing services to the United States public health service, the United States department of veterans affairs or within federally controlled facilities in the discharge of their official duties; provided that such persons who hold dental licenses in New Mexico shall be subject to the provisions of the Dental Health Care Act;

(7) dental assistants performing adjunctive services to the provision of dental care, under the indirect supervision of a dentist, as determined by rule of the board if such services are not within the practice of dental hygiene as specifically listed in Subsection B of Section 61-5A-4 NMSA 1978, unless allowed in Subsection F of this section;

(8) a dental therapy student or graduate of a dental therapy educational program enrolled in a board-approved program while engaged in an educational program offered by the dental therapy educational program or dental therapy post-graduate clinical experience in a private office, public clinic or educational institution within the state of New Mexico under the indirect supervision of a licensed dentist; and

(9) a dental therapist who is licensed in New Mexico working under the supervision of a dentist and performing the procedures in accordance with the provisions of Section 9 [61-5A-13.1 NMSA 1978] of this 2019 act.

C. Unless licensed to practice as a dental therapist under the Dental Health Care Act, no person shall:

- (1) practice as a dental therapist;
- (2) use the title, abbreviation "D.T.", letters, figures, signs or devices that indicate the person is a licensed dental therapist; or
- (3) perform any of the acts defined as the practice of dental therapy in the Dental Health Care Act.

D. Unless licensed to practice as a dental hygienist under the Dental Health Care Act, no person shall:

- (1) practice as a dental hygienist;
- (2) use the title "dental hygienist" or abbreviation "R.D.H." or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dental hygienist; or
- (3) perform any of the acts defined as the practice of dental hygiene in the Dental Health Care Act.

E. The following, under the stipulations described, may practice dental hygiene or the area of dental hygiene outlined without a New Mexico dental hygiene license:

(1) students enrolled in an accredited dental hygiene program engaged in procedures that are part of the curriculum of that program and under the indirect supervision of a licensed faculty member of the accredited program;

(2) dental assistants and community dental health coordinators working under general supervision who:

- (a) expose dental radiographs after being certified in expanded functions by the board;
- (b) perform rubber cup coronal polishing, which is not represented as a prophylaxis, having satisfied the educational requirements as established by rules of the board;
- (c) apply fluorides as established by rules of the board; and
- (d) perform those other dental hygienist functions as recommended to the board by the committee and set forth by rule of the board; and

(3) dental assistants certified in expanded functions, working under the indirect supervision of a dental hygienist certified for collaborative practice and under the protocols established in a collaborative practice agreement with a consulting dentist.

F. Dental assistants working under the indirect supervision of a dentist and in accordance with the rules and regulations established by the board may:

- (1) expose dental radiographs;
- (2) perform rubber cup coronal polishing that is not represented as a prophylaxis;
- (3) apply fluoride and pit and fissure sealants without mechanical alteration of the tooth;
- (4) perform those other dental hygienist functions as recommended to the board by the committee and set forth by rule of the board; and
- (5) perform such other related functions that are not expressly prohibited by statute or rules of the board.

G. A community dental health coordinator working under the general supervision of a dentist and in accordance with the rules established by the board may:

- (1) place temporary and sedative restorative material in unexcavated carious lesions and unprepared tooth fractures;
- (2) collect and transmit diagnostic data and images via telemetric connection;
- (3) dispense and apply medications on the specific order of a dentist;
- (4) provide limited palliative procedures for dental emergencies in consultation with a supervising dentist as allowed by the rules the board has promulgated; and
- (5) perform other related functions for which the community dental health coordinator meets training and educational standards established by the board and that are not expressly prohibited by statute or rules promulgated by the board.

H. Unless licensed as a dentist or non-dentist owner, or as otherwise exempt from the licensing requirements of the Dental Health Care Act, no individual or corporate entity shall:

- (1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or
- (2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

I. The following, under stipulations described, may function as a non-dentist owner without a New Mexico license:

- (1) government agencies providing dental services within affiliated facilities;
- (2) government agencies engaged in providing public health measures to prevent dental disease;
- (3) spouses of deceased licensed dentists or dental hygienists for a period of one year following the death of the licensee;
- (4) accredited schools of dentistry, dental hygiene and dental assisting providing dental services solely in an educational setting;
- (5) dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;
- (6) federally qualified health centers, as designated by the United States department of health and human services, providing dental services;
- (7) nonprofit community dental organizations; and
- (8) hospitals licensed by the department of health.

History: Laws 1994, ch. 55, § 5; 2003, ch. 409, § 4; 2011, ch. 113, § 6; 2019, ch. 107, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2019 amendment, effective June 14, 2019, required licensure to practice as a dental therapist, and allowed certain dental therapists licensed in New Mexico and certain dental therapy students or graduates of a dental therapy educational program to practice dentistry or an area of dentistry without a New Mexico dental license under certain conditions; in Subsection B, added new Paragraphs B(8) and B(9); added new Subsection C and redesignated former Subsections C through H as Subsections D through I; and in Subsection I, in Paragraph I(7), after "nonprofit", deleted "community-based entities and" and added "community dental", and after "organizations",

deleted "that use public funds to provide dental and dental hygiene services for indigent persons".

Temporary provisions. — Laws 2019, ch. 107, § 17 provided that the department of health shall conduct an outcome report on the first five years of dental therapy practice in the state pursuant to this 2019 act. At a date five years following the date of the first issuance of a license to practice dental therapy in the state, the department of health shall consult with the New Mexico board of dental health care, the New Mexico dental hygienists' association and the New Mexico dental association to compile and issue a report to the legislative health and human services committee of the department's findings and recommendations regarding dental therapy, including:

- A. its efficacy, effectiveness and cost;
- B. its impact on access to dental health care;
- C. the distribution of dental therapists statewide;

D. demographic representation among dental therapists;

E. issues related to supervision of dental therapists and their scope of practice;

F. evaluation of services delivered under indirect supervision for recommendation to general supervision; and

G. evaluation of services delivered under general supervision for recommendation to indirect supervision.

The 2011 amendment, effective June 17, 2011, authorized community dental health coordinators to provide dental services within their scope of practice without a dental license and to perform specified dental hygiene functions under general supervision without a dental hygiene license and added Subsection F to authorize community dental health coordinators working under supervision to perform specified functions.

The 2003 amendment, effective June 20, 2003, rewrote Paragraph B(4); added Paragraph B(7); in Paragraph C(3) substituted "defined as" for "enumerated under the definition of" following "any of the acts" near the beginning and deleted "as defined" following "dental hygiene" near the end; substituted "hygiene" for "hygienist" following "New Mexico dental" near the end of Subsection D; added present Paragraph D(3); and added Subsections E, F and G.

ANNOTATIONS

Actions by unlicensed assistants held to be unlawful practice of dentistry. — Unlicensed assistants performing such dental services as taking impressions and adjusting dentures constitutes the unlawful practice of dentistry. *Family Dental Ctr. v. N.M. Bd. of Dentistry*, 1982-NMSC-020, 97 N.M. 464, 641 P.2d 495.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 26.

Entrapment to commit offense of practicing dentistry without license, 18 A.L.R. 186, 66 A.L.R. 478, 86 A.L.R. 263.

Unlicensed dentist's right to recover for services, 30 A.L.R. 860, 42 A.L.R. 1226, 118 A.L.R. 646.

Kind or character of treatment which may be given by one licensed as dentist, 86 A.L.R. 625.

Corporation or individual not himself licensed, right of, to practice dentistry through licensed employees, 103 A.L.R. 1240.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 12, 16.

61-5A-5.1. Non-dentist owner; employing or contracting for dental services. (Repealed effective July 1, 2024.)

A. A person, corporation or agency that desires to function as a non-dentist owner in New Mexico shall apply to the board for the proper license and shall adhere to the requirements, relicensure criteria and fees as established by the rules of the board.

B. Unless licensed as a dentist or non-dentist owner, or as otherwise exempt from the licensing requirements of the Dental Health Care Act, an individual or corporate entity shall not:

(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

History: Laws 2003, ch. 409, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

Effective dates. — Laws 2003, ch. 409 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

61-5A-6. Certification of dental assistants, expanded-function dental auxiliaries and community dental health coordinators. (Repealed effective July 1, 2024.)

A. A certified dental assistant, an expanded-function dental auxiliary, a community dental health coordinator or a dental assistant certified in expanded functions shall be required to adhere to the educational requirements, examinations, recertification criteria and fees as established by rules and regulations of the board. The fee shall be the same for one or more expanded functions.

B. Certificates granted by the board may be revoked, suspended, stipulated or otherwise limited, and a certificate holder may be fined or placed on probation if found guilty of violation of the Dental Health Care Act.

C. No individual shall use the title "C.D.A." unless granted certification by the dental assistant national board.

D. Unless certified to practice as a dental assistant certified in expanded functions or an expanded-function dental auxiliary, no person shall:

- (1) practice as a dental assistant certified in expanded functions as defined by rules of the board; or
- (2) use the title or represent oneself as an assistant certified in expanded functions or an expanded-function dental auxiliary or use any title, abbreviation, letters, figures, signs or devices that indicate the person is a dental assistant certified in expanded functions or an expanded-function dental auxiliary.

History: Laws 1994, ch. 55, § 6; 2011, ch. 113, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2011 amendment, effective June 17, 2011, included expanded-functional dental auxiliaries and community dental health coordinators within the scope of this section.

61-5A-6.1. Expanded-function dental auxiliary; certification. (Repealed effective July 1, 2024.)

A. The board shall establish academic standards and criteria for certifying dental assistants, dental hygienists or other dental personnel to practice as expanded-function dental auxiliaries. Those standards and criteria shall include a formal curriculum and a certifying examination.

B. The board shall promulgate rules relating to the certification of expanded-function dental auxiliaries pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 2011, ch. 113, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

Effective dates. — Laws 2011, ch. 113 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

61-5A-7. Dental and dental hygiene districts created. (Repealed effective July 1, 2024.)

For the purpose of selecting members of the board and the committee, there are created five districts composed of the following counties:

- A. district I: San Juan, Rio Arriba, Taos, Sandoval, McKinley and Cibola;
- B. district II: Colfax, Union, Mora, Harding, San Miguel, Quay, Guadalupe, Santa Fe and Los Alamos;
- C. district III: Bernalillo, Valencia and Tarrant;
- D. district IV: Catron, Socorro, Grant, Sierra, Hidalgo, Luna, Dona Ana and Otero; and
- E. district V: Lincoln, De Baca, Roosevelt, Chaves, Eddy, Curry and Lea.

History: Laws 1994, ch. 55, § 7; 2003, ch. 409, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted "Santa Fe and Los Alamos" following "Cibola" at the

end of Subsection A; in Subsection B, deleted "Curry" following "San Miguel" near the middle and added "Santa Fe and Los Alamos" at the end; and inserted "Curry" following "Eddy" near the end of Subsection E.

61-5A-8. Board created. (Repealed effective July 1, 2024.)

A. There is created the nine-member "New Mexico board of dental health care". The board shall consist of five dentists, two dental hygienists and two public members. The dentists shall be actively practicing and have been licensed practitioners and residents of New Mexico for a period of five years preceding the date of appointment. The dental hygienist members shall be members of the committee and shall be elected annually to sit on the board by those sitting on the committee. The appointed public members shall be residents of New Mexico and shall have no financial interest, direct or indirect, in the professions regulated in the Dental Health Care Act.

B. The governor may appoint the dentist members from a list of names submitted by the New Mexico dental association. There shall be one member from each district. All board members shall

serve until their successors have been appointed. No more than one member may be employed by or receive remuneration from a dental or dental hygiene educational institution.

C. Appointments for dentists and public members shall be for terms of five years. Dentists' appointments shall be made so that the term of one dentist member expires on July 1 of each year. Public members' five-year terms begin at the date of appointment.

D. Any board member failing to attend three board or committee meetings, either regular or special, during the board member's term shall automatically be removed as a member of the board unless excused from attendance by the board for good cause shown. Members of the board not sitting on the committee shall not be required or allowed to attend committee disciplinary hearings.

E. No board member shall serve more than two full terms on any state-chartered board whose responsibility includes the regulation of practice or licensure of dentistry or dental hygiene in New Mexico. A partial term of three or more years shall be considered a full term.

F. In the event of any vacancy, the secretary of the board shall immediately notify the governor, the board and committee members and the New Mexico dental association of the reason for its occurrence and action taken by the board, so as to expedite appointment of a new board member.

G. The board shall meet at least four times every year and no more than two meetings shall be public rules hearings. Regular meetings shall not be more than one hundred twenty days apart. The board may also hold special meetings and emergency meetings in accordance with rules of the board upon written notice to all members of the board and the committee.

H. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance; however, the secretary-treasurer may be compensated at the discretion of the board.

I. A simple majority of the board members currently serving shall constitute a quorum, provided at least two of that quorum are not dentist members and three are dentist members.

J. The board shall elect officers annually as deemed necessary to administer its duties and as provided in its rules.

History: Laws 1994, ch. 55, § 8; 2003, ch. 408, § 4; 2003, ch. 409, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

Cross references. — For establishment of dental districts, see 61-5A-7 NMSA 1978.

2003 Multiple Amendments. — Laws 2003, ch. 408, § 4 and Laws 2003, ch. 409, § 6 both enacted amendments to this section. Pursuant to 12-1-8 NMSA 1978, Laws 2003, ch. 409, § 6, as the act last signed by the governor, has been compiled into the NMSA as set out above, and Laws 2003, ch. 408, § 4, while not compiled pursuant to 12-1-8 NMSA 1978, is set out below.

Laws 2003, ch. 409, § 6 [set out above], effective June 20, 2003, added "Members of the board not sitting on the committee shall not be required or allowed to attend committee disciplinary hearings" following "good cause shown" at the end of Subsection D; added "on any state-chartered board whose responsibility includes the regulation of practice or licensure of dentistry or dental hygiene in New Mexico. A partial term of three or more years shall be considered a full term" following "two full terms" at the end of Subsection E; in Subsection G, substituted "at least four times" for "quarterly" following "board shall meet" near the beginning and inserted "and no more than two meetings shall be public rules hearings. Regular meetings shall not be more than one hundred twenty days apart" following "every year" near the beginning; and deleted "and regulations" following "rules" at the end of Subsection J.

Laws 2003, ch. 408, § 4 [set out below], effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department" following the first sentence of Subsection A, and provided:

"61-5A-8. Board created.--

A. There is created the nine-member "New Mexico board of dental health care". The board shall be

administratively attached to the regulation and licensing department. The board shall consist of five dentists, two dental hygienists and two public members. The dentists shall be actively practicing and have been licensed practitioners and residents of New Mexico for a period of five years preceding the date of appointment. The dental hygienist members shall be members of the committee and shall be elected annually to sit on the board by those sitting on the committee. The appointed public members shall be residents of New Mexico and shall have no financial interest, direct or indirect, in the professions regulated in the Dental Health Care Act.

B. The governor may appoint the dentist members from a list of names submitted by the New Mexico dental association. There shall be one member from each district. All board members shall serve until their successors have been appointed. A member shall not be employed by or receive remuneration from a dental or dental hygiene educational institution.

C. Appointments for dentists and public members shall be for terms of five years. Dentists' appointments shall be made so that the term of one dentist member expires on July 1 of each year. Public members' five-year terms begin at the date of appointment.

D. A board member failing to attend three board or committee meetings, either regular or special, during the board member's term shall automatically be removed as a member of the board unless excused from attendance by the board for good cause shown.

E. A board member shall not serve more than two full terms.

F. In the event of a vacancy, the secretary of the board shall immediately notify the governor, the board and committee members and the New Mexico dental association of the reason for its occurrence and action taken by the board, so as to expedite appointment of a new board member.

G. The board shall meet quarterly every year. The board may also hold special meetings and emergency meetings in accordance with rules of the board upon written notice to all members of the board and committee.

H. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance; however, the secretary-treasurer may be compensated at the discretion of the board.

I. A simple majority of the board members currently serving shall constitute a quorum, provided at least two of that quorum are not dentist members and three are dentist members.

J. The board shall elect officers annually as deemed necessary to administer its duties and as provided in its rules and regulations."

ANNOTATIONS

Residential restrictions. — There is no reason why residential restrictions cannot be placed on membership on a professional board so long as the whole state is represented. 1953-54 Op. Att'y Gen. No. 53-5750.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

61-5A-9. Committee created. (Repealed effective July 1, 2024.)

A. There is created the nine-member "New Mexico dental hygienists committee". The committee shall consist of five dental hygienists, two dentists and two public members. The dental hygienists shall be actively practicing and have been licensed practitioners and residents of New Mexico for a period of five years preceding the date of their appointment. The dentists and public members shall be members of the board and shall be elected annually to sit on the committee by those members sitting on the board.

B. The governor may appoint the dental hygienists from a list of names submitted by the New Mexico dental hygienists' association. There shall be one member from each district. All members shall serve until their successors have been appointed. No more than one member may be employed by or receive remuneration from a dental or dental hygiene educational institution.

C. Appointments for dental hygienist members shall be for terms of five years. Appointments shall be made so that the term of one dental hygienist expires on July 1 of each year.

D. Any committee member failing to attend three committee or board meetings, either regular or special, during the committee member's term shall automatically be removed as a member of the committee unless excused from attendance by the committee for good cause shown. Members of the committee not sitting on the board shall not be required or allowed to attend board disciplinary hearings.

E. No committee member shall serve more than two full terms on any state-chartered board whose responsibility includes the regulation of practice or licensure of dentistry or dental hygiene in New Mexico. A partial term of three or more years shall be considered a full term.

F. In the event of any vacancy, the secretary of the committee shall immediately notify the governor, the committee and board members and the New Mexico dental hygienists' association of the reason for its occurrence and action taken by the committee, so as to expedite appointment of a new committee member.

G. The committee shall meet at least four times every year and no more than two meetings shall be public rules hearings. Regular meetings shall not be more than one hundred twenty days apart. The committee may also hold special meetings and emergency meetings in accordance with the rules of the board and committee, upon written notification to all members of the committee and the board.

H. Members of the committee shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

I. A simple majority of the committee members currently serving shall constitute a quorum, provided at least two of that quorum are not hygienist members and three are hygienist members.

J. The committee shall elect officers annually as deemed necessary to administer its duties and as provided in rules and regulations of the board and committee.

History: Laws 1994, ch. 55, § 9; 2003, ch. 408, § 5; 2003, ch. 409, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2003 amendment, effective June 20, 2003, rewrote the section.

This section was also amended by Laws 2003, ch. 408, § 5, effective July 1, 2003, which added "The committee shall be administratively attached to the regulation and licensing department," following the first sentence of Subsection A; inserted "for dental hygienist members" following "Appointments" near the beginning of Subsection C; in

Subsection G, inserted "committee" following "accordance with the" near the middle, and deleted "and regulations" following "rules" near the middle; and inserted "the committee" following "as provided in" near the end of Subsection J. The section was set out as amended by Laws 2003, ch. 409, § 7. See 12-1-8 NMSA 1978.

ANNOTATIONS

Recommendations to board of dental health care. — The dental hygienists committee may make recommendations about the practice of dental hygiene to the board

of dentistry upon the request of the board or on its own initiative, but the board of dental health care is not required to follow those recommendations. 1987 Op. Att'y Gen. No. 87-82.

Compliance with Open Meetings Act. — The dental hygiene committee must comply fully with the Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA 1978. 1987 Op. Att'y Gen. No. 87-82.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 21, 22.

61-5A-10. Powers and duties of the board and committee. (Repealed effective July 1, 2024.)

In addition to any other authority provided by law, the board and the committee, when designated, shall:

A. enforce and administer the provisions of the Dental Health Care Act and the Dental Amalgam Waste Reduction Act [61-5C-1 to 61-5C-6 NMSA 1978];

B. promulgate in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules as necessary to:

(1) regulate the examination and licensure of dentists and dental therapists and, through the committee, regulate the examination and licensure of dental hygienists;

(2) provide for the examination and certification of dental assistants by the board;

(3) provide for the regulation of dental technicians by the board;

(4) regulate the practice of dentistry, dental therapy and dental assisting and, through the committee, regulate the practice of dental hygiene; and

(5) provide for the regulation and licensure of non-dentist owners by the board;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board or the committee, as appropriate;

E. keep an accurate record of all meetings, receipts and disbursements;

F. grant, deny, review, suspend and revoke licenses and certificates to practice dentistry, dental therapy, dental assisting and, through the committee, dental hygiene and censure, reprimand, fine and place on probation and stipulation dentists, dental therapists, dental assistants and, through the committee, dental hygienists, in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for any cause stated in the Dental Health Care Act and the Dental Amalgam Waste Reduction Act;

G. grant, deny, review, suspend and revoke licenses to own dental practices and censure, reprimand, fine and place on probation and stipulation non-dentist owners, in accordance with the Uniform Licensing Act, for any cause stated in the Dental Health Care Act and the Dental Amalgam Waste Reduction Act;

H. maintain records of the name, address, license number and such other demographic data as may serve the needs of the board of licensees, together with a record of license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines. The board shall make available composite reports of demographic data but shall limit public access to information regarding individuals to their names, addresses, license numbers and license actions or as required by statute;

I. hire and contract for services from persons as necessary to carry out the board's duties;

J. establish ad hoc committees whose members shall be appointed by the chair with the advice and consent of the board or committee and shall include at least one member of the board or committee as it deems necessary for carrying on its business;

K. have the authority to pay per diem and mileage to persons who are appointed by the board or the committee to serve on ad hoc committees;

L. have the authority to hire or contract with investigators to investigate possible violations of the Dental Health Care Act and the Dental Amalgam Waste Reduction Act;

M. have the authority to issue investigative subpoenas prior to the issuance of a notice of contemplated action for the purpose of investigating complaints against dentists, dental therapists, dental assistants and, through the committee, dental hygienists licensed under the Dental Health Care Act and the Dental Amalgam Waste Reduction Act;

N. have the authority to sue or be sued and to retain the services of an attorney at law for counsel and representation regarding the carrying out of the board's duties;

O. have the authority to create and maintain a formulary, in consultation with the board of pharmacy, of medications that a dental therapist or dental hygienist may prescribe, administer or dispense in accordance with rules the board has promulgated; and

P. establish continuing education or continued competency requirements for dentists, dental therapists, certified dental assistants in expanded functions, dental technicians and, through the committee, dental hygienists.

History: Laws 1994, ch. 55, § 10; 2003, ch. 408, § 6; 2003, ch. 409, § 8; 2011, ch. 113, § 8; 2013, ch. 206, § 7; 2019, ch. 107, § 3; 2022, ch. 39, § 26.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

Cross references. — For effect of regulations adopted under former Dental Act, see 61-5A-28 NMSA 1978.

The 2022 amendment, effective May 18, 2022, removed a provision requiring the New Mexico board of dental health care to adopt, publish, file and revise rules in accordance with the Uniform Licensing Act, leaving in place a requirement that the board promulgate rules in accordance with the State Rules Act; and in Subsection B, deleted "adopt, publish, file and revise, in accordance with the Uniform Licensing Act and", and added "promulgate in accordance with", and after "all rules as", deleted "may be".

The 2019 amendment, effective June 14, 2019, required the New Mexico board of dental health care to regulate the examination and licensure of dental therapists, regulate the practice of dental therapy, enforce provisions of the Dental Health Care Act and the Dental Amalgam Waste Reduction Act as it relates to dental therapy, establish continuing education or continued competency requirements for dental therapists, authorized the board to investigate complaints against dental therapists, and authorized the board to create and maintain a formulary, in consultation with the board of pharmacy, of medications that a dental therapist may prescribe, administer or dispense; in Subsection B, in Paragraph B(1), after "licensure of dentists", added "and dental therapists", in Paragraph B(4), after "practice of dentistry", added "dental therapy"; in Subsection F, after "practice dentistry", added "dental therapy", and after "stipulation dentists", added "dental therapists"; in Subsection M, after "against dentists", added "dental therapists"; in Subsection O, after "medications that a", added "dental therapist or"; and in Subsection P, after "requirements for dentists", added "dental therapists".

The 2013 amendment, effective June 14, 2013, provided for the enforcement of the Dental Amalgam Waste Reduction Act by the board and committee; in Subsections A, F, G, L and M after "Dental Health Care Act" added "and the Dental Amalgam Waste Reduction Act".

Temporary provisions. — Laws 2013, ch. 206, § 8 provided that the New Mexico board of dental health care shall promulgate rules by June 30, 2013 to require that a dental office maintain records of maintenance and inspection for the three years following the most recent inspection of an amalgam separator and that use of an amalgam separation method or technology that is approved by the department of environment, the water quality control commission or the New Mexico board of dental health care is in compliance with the requirements of this section.

The 2011 amendment, effective June 17, 2011, authorized the board to obtain services necessary to perform, the board's duties, to sue and be sued, to retain attorneys and to maintain a formulary that dental hygienists may administer.

The 2003 amendment, effective June 20, 2003, deleted "and regulations" following "all rules" near the end of Subsection B; added Paragraph B(5); added present Subsection G and redesignated the subsequent subsections accordingly; rewrote present Subsection H; and inserted "and shall include at least one member of the board or committee" preceding "as it deems necessary" near the end of present Subsection J.

ANNOTATIONS

Employment of attorney. — The state board of dental examiners (now the board of dental health care) was specifically authorized, under former dental act, to employ and pay an attorney from funds appropriated to it in order to assist in prosecutions to prevent unauthorized practice of dentistry. 1937-38 Op. Att'y Gen. No. 37-1763.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 45.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 22 to 24.

61-5A-11. Ratification of committee recommendations. (Repealed effective July 1, 2024.)

A. The board shall ratify the recommendations of the committee unless the board makes a specific finding that a recommendation is:

- (1) beyond the jurisdiction of the committee;
- (2) an undue financial impact upon the board; or
- (3) not supported by the record.

B. The board shall provide the necessary expenditures incurred by the committee and the board in implementing and executing the ratified recommendations.

History: Laws 1994, ch. 55, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5A-12. Dentists; requirements for licensure; specialty license.
(Repealed effective July 1, 2024.)

A. All applicants for licensure as a dentist shall have graduated and received a degree from a school of dentistry that is accredited by the commission on dental accreditation and shall have passed the written portion of the dental examination administered by the joint commission on national dental examinations of the American dental association or, if the test is not available, another written examination determined by the board.

B. Applicants for a general license to practice dentistry by examination shall be required, in addition to the requirements set forth in Subsection A of this section, to pass a test covering the laws and rules for the practice of dentistry in New Mexico. Written examinations shall be supplemented by the board or its agents by administering to each applicant a practical or clinical examination that reasonably tests the applicant's qualifications to practice general dentistry. These examinations shall include examinations offered by the central regional dental testing service, northeast regional board of dental examiners, southern regional testing agency or western regional examining board or any other comparable practical clinical examination the board approves; provided, however, that the board may disapprove any examination after it considers compelling evidence to support disapproval. Upon an applicant passing the written and clinical examinations and payment in advance of the necessary fees, the board shall issue a license to practice dentistry.

C. The board may issue a general license to practice dentistry, by credentials, without a practical or clinical examination to an applicant who is duly licensed by a clinical examination as a dentist under the laws of another state or territory of the United States; provided that license is active and that all dental licenses that individual possesses have been in good standing for five years prior to application. The credentials must show that no dental board actions have been taken during the five years prior to application; that no proceedings are pending in any states in which the applicant has had a license in the five years prior to application; and that a review of public records, the national practitioner data bank or other nationally recognized data resources that record actions against a dentist in the United States does not reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude.

D. The board may issue a general license to practice dentistry by credentials to an applicant who meets the requirements, including payment of appropriate fees and the passing of an examination covering the laws and rules of the practice of dentistry in New Mexico, of the Dental Health Care Act and rules promulgated pursuant to that act, and who:

(1) has maintained a uniform service practice in the United States military or public health service for three years immediately preceding the application; or

(2) is duly licensed by examination as a dentist pursuant to the laws of another state or territory of the United States.

E. The board may issue a specialty license by examination to an applicant who has passed a clinical and written examination given by the board or its examining agents that covers the applicant's specialty. The applicant shall have a postgraduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the commission on dental accreditation in one of the specialty areas of dentistry recognized by the American dental association. The applicant shall also meet all other requirements as established by rules of the board, which shall include an examination covering the laws and rules of the practice of dentistry in New Mexico. A specialty license limits the licensee to practice only in that specialty area.

F. The board may issue a specialty license, by credentials, without a practical or clinical examination to an applicant who is duly licensed by a clinical examination as a dentist under the laws of another state or territory of the United States and who has a postgraduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that

is accredited by the commission on dental accreditation in one of the specialty areas of dentistry recognized by the American dental association; provided that license is active and that all dental licenses that individual possesses have been in good standing for five years prior to application. The credentials must show that no dental board actions have been taken during the five years prior to application; that no proceedings are pending in any states in which the applicant has had a license in the five years prior to application; and that a review of public records, the national practitioner data bank or other nationally recognized data resources that record actions against a dentist in the United States does not reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude. The applicant shall also meet all other qualifications as deemed necessary by rules of the board, which shall include an examination covering the laws and rules of the practice of dentistry in New Mexico. A specialty license limits the licensee to practice only in that specialty area.

History: Laws 1994, ch. 55, § 12; 1999, ch. 292, § 2; 2003, ch. 409, § 9; 2011, ch. 113, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2011 amendment, effective June 17, 2011, in Subsection B, listed testing agencies that offer examinations that the board may use.

The 2003 amendment, effective June 20, 2003, in Subsection A, deleted "an accredited dental college or" preceding "a school of dentistry" near the beginning, deleted "of a university" following "school of dentistry" near the beginning and substituted "joint" for "American dental association" following "accredited by the" near the middle; in Subsection B, inserted "license to practice" following "for a general" near the beginning, deleted "licensure" preceding "by examination shall" near the beginning, and substituted "rules" for "regulations" following "covering the laws and" near the middle; rewrote Subsection C; in Subsection E, substituted "joint" for "American dental association" following "accredited by the" near the middle, and substituted "rules" for "regulations" following "covering the laws and" near the end; and rewrote Subsection F.

The 1999 amendment, effective June 18, 1999, substituted "shall" for "must" and "may" throughout the section, inserted "or" before "school of dentistry" in Subsection A,

inserted "the requirements set forth in" in the first sentence of Subsection B, rewrote Subsection B, added Subsection D, redesignated former Subsections D and E as Subsections E and F, deleted "successfully" before "passed a clinical and written" and substituted "rule" and "rules" for "regulations" Subsection E.

ANNOTATIONS

State's legitimate interest in licensing persons to practice dentistry or dental hygiene is to assure that the individual is competent. 1980 Op. Att'y Gen. No. 80-20.

Fee not returnable. — Application fee for examination could not be returned in the event that the examination was not taken by the applicant. 1939-40 Op. Att'y Gen. No. 39-3220.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 62.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry or medicine from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

Practicing dentistry without a license as a continuing or separate offense, 99 A.L.R.2d 654.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 12, 16, 19, 20.

61-5A-13. Dental hygienist licensure. (Repealed effective July 1, 2024.)

A. Applicants for licensure shall have graduated and received a degree from an accredited dental hygiene educational program that provides a minimum of two academic years of dental hygiene curriculum and is a post-secondary educational institution accredited by the joint commission on dental accreditation and shall have passed the written portion of the dental hygiene examination administered by the joint commission on national dental examinations of the American dental association or, if this test is not available, another written examination determined by the committee.

B. Applicants for licensure by examination shall be required, in addition to the requirements set forth in Subsection A of this section, to pass a written examination covering the laws and rules for practice in New Mexico. Each written examination shall be supplemented by a practical or clinical examination administered by the committee or its agents that reasonably tests the applicant's qualifications to practice as a dental hygienist. Upon an applicant passing the written and clinical examinations, the board, upon recommendation of the committee, shall issue a license to practice as a dental hygienist.

C. The board, upon the committee's recommendation, shall issue a license to practice as a dental hygienist by credentials without examination, including practical or clinical examination, to an applicant who is a duly licensed dental hygienist by examination under the laws of another state or territory of the United States and whose license is in good standing for the two previous

years in that jurisdiction and if the applicant otherwise meets all other requirements of the Dental Health Care Act, including payment of appropriate fees and passing an examination covering the laws and rules pertaining to practice as a dental hygienist in New Mexico.

History: Laws 1994, ch. 55, § 13; 1999, ch. 292, § 3; 2003, ch. 409, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2003 amendment, effective June 20, 2003, in Subsection A substituted "degree" for "diploma" following "and received a" near the beginning and substituted "joint" for "American dental association" following "accredited by the" near the middle; and inserted "for the two

previous years" following "is in good standing" near the middle of Subsection C.

The 1999 amendment, effective June 18, 1999, in Subsection A substituted "shall have" for "must have" near the beginning and inserted "shall" before "have passed" near the middle; in Subsection B, substituted "requirements set forth in Subsection A" for "provisions of Subsection A" and deleted "also" before "pass a written", and substituted "rules" for "regulations", and rewrote Subsection C.

61-5A-13.1. Dental therapist licensure; requirements. (Repealed effective July 1, 2024.)

A. The board shall license as a dental therapist any individual who, in accordance with board rules:

- (1) provides evidence of licensure as a dental hygienist;
- (2) provides evidence of having graduated and received a degree from a dental therapy education program accredited by the commission on dental accreditation;
- (3) has passed a written examination covering the statutes and rules relating to the practice of dental therapy in the state within a time frame established in board rules;
- (4) has passed a practical or clinical examination on the practice of dental therapy administered by the board or its agent that reasonably tests the individual's skill in practicing dental therapy; and
- (5) has paid any requisite fees and complied with any other reasonable requirements for licensure as a dental therapist that the board has established by rule.

B. No dentist shall supervise more than three dental therapists at any one time.

History: Laws 2019, ch. 107, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

Effective dates. — Laws 2019, ch. 107, § 19 made Laws 2019, ch. 107, § 9 effective June 14, 2019.

Temporary provisions. — Laws 2019, ch. 107, § 17 provided that the department of health shall conduct an outcome report on the first five years of dental therapy practice in the state pursuant to this 2019 act. At a date five years following the date of the first issuance of a license to practice dental therapy in the state, the department of health shall consult with the New Mexico board of dental health care, the New Mexico dental hygienists' association and the New Mexico dental association to compile and issue a report to the legislative health and

human services committee of the department's findings and recommendations regarding dental therapy, including:

- A. its efficacy, effectiveness and cost;
- B. its impact on access to dental health care;
- C. the distribution of dental therapists statewide;
- D. demographic representation among dental therapists;
- E. issues related to supervision of dental therapists and their scope of practice;
- F. evaluation of services delivered under indirect supervision for recommendation to general supervision; and
- G. evaluation of services delivered under general supervision for recommendation to indirect supervision.

61-5A-13.2. Dental therapy; scope of practice; supervision. (Repealed effective July 1, 2024.)

A. A dental therapist shall provide care in accordance with a dental therapy practice agreement; provided that the dental therapy practice agreement is limited to:

- (1) the following activities performed under general supervision:
 - (a) oral evaluation and assessment of dental disease;
 - (b) formulation of an individualized treatment plan as authorized by a supervising dentist;
 - (c) place and shape direct restorations without mechanical preparation;
 - (d) impressions for single-tooth removable prosthesis;
 - (e) temporary cementation;

- (f) atraumatic restorative therapy;
 - (g) temporary and sedative restorations;
 - (h) extraction of primary teeth without radiological evidence of roots;
 - (i) palliative treatments;
 - (j) fabrication and placement of temporary crowns;
 - (k) recementation of permanent crowns;
 - (l) removal and nonsurgical placement of space maintainers;
 - (m) repairs and adjustments to prostheses;
 - (n) tissue conditioning;
 - (o) administration of analgesics, anti-inflammatory substances and antibiotics that a supervising dentist orders; and
 - (p) other closely related procedures that the board authorizes through rules it has adopted and promulgated; and
- (2) the following activities that a dental therapist performs under indirect supervision or, if the dental therapist has completed a dental therapy post-graduate clinical experience, under general supervision:
- (a) preparation and direct restoration of cavities in primary and permanent teeth; and
 - (b) fitting, shaping and cementing of stainless steel crowns on teeth prepared by a dentist.

B. A dental therapist may treat a patient prior to a dentist's examination or diagnosis, subject to a dental therapy practice agreement.

History: Laws 2019, ch. 107, § 10. **Effective dates.** — Laws 2019, ch. 107, § 19 made
Delayed repeals. — For delayed repeal of this section, Laws 2019, ch. 107, § 10 effective June 14, 2019.
 see 61-5A-30 NMSA 1978.

61-5A-13.3. Dental therapy; practice environments. (Repealed effective July 1, 2024.)

- A. A dental therapist shall practice only in the following environments:
- (1) a nonprofit community dental organization;
 - (2) a health facility operated by the federal Indian health service;
 - (3) a health facility that a tribe operates under Section 638 of the federal Indian Self-Determination and Education Assistance Act;
 - (4) a federally qualified health center;
 - (5) a facility certified by the federal centers for medicare and medicaid services as a "federally qualified health center look-alike" facility;
 - (6) a private residence or a facility in which an individual receives long-term community-based services under the state's medicaid program;
 - (7) a long-term care facility;
 - (8) a private residence, when exclusively to treat an individual who, due to disease, disability or condition, is unable to receive care in a dental facility; or
 - (9) an educational institution engaged in the training of dental therapists accredited by the commission on dental accreditation.

B. The provisions of this section shall not be construed to prohibit, restrict or impose state licensure or regulatory requirements or obligations on the practice of dental therapy:

- (1) on tribal lands; or
- (2) by a dental therapist who is employed by a tribal health program, a federal Indian health program or a federally operated Indian health service health care site.

History: Laws 2019, ch. 107, § 11. **Effective dates.** — Laws 2019, ch. 107, § 19 made
Delayed repeals. — For delayed repeal of this section, Laws 2019, ch. 107, § 11 effective June 14, 2019.
 see 61-5A-30 NMSA 1978.

61-5A-14. Temporary licensure; expedited licensure. (Repealed effective July 1, 2024.)

A. The board or the committee may issue a temporary license to practice dentistry or dental hygiene to an applicant who is licensed to practice dentistry or dental hygiene in another state or territory of the United States or the District of Columbia and who is otherwise qualified to practice dentistry or dental hygiene in this state. The following provisions shall apply:

(1) the applicant shall hold a valid license in good standing in another state or territory of the United States or the District of Columbia;

(2) the applicant shall practice dentistry or dental hygiene under the sponsorship of or in association with a licensed New Mexico dentist or dental hygienist;

(3) the temporary license may be issued for those activities as stipulated by the board or committee in the rules of the board. It may be issued upon written application of the applicant when accompanied by such proof of qualifications as the secretary-treasurer of the board or committee, in the secretary-treasurer's discretion, may require. Temporary licensees shall engage in only those activities specified on the temporary license for the time designated, and the temporary license shall identify the licensed New Mexico dentist or dental hygienist who will sponsor or associate with the applicant during the time the applicant practices dentistry or dental hygiene in New Mexico;

(4) the sponsoring or associating dentist or dental hygienist shall submit an affidavit attesting to the qualifications of the applicant and the activities the applicant will perform;

(5) the temporary license shall be issued for a period not to exceed twelve months and may be renewed upon application and payment of required fees;

(6) the application for a temporary license under this section shall be accompanied by a license fee; and

(7) the temporary licensee shall be required to comply with the Dental Health Care Act and all rules promulgated pursuant to that act.

B. The board or committee shall issue an expedited license without examination to a dentist or dental hygienist licensed in another licensing jurisdiction if the applicant holds a license that is current and in good standing issued by the other licensing jurisdiction. The board shall, as soon as practicable but no later than thirty days after a person files an application for a license accompanied by any required fees, process the application and issue the expedited license in accordance with Section 61-1-31.1 NMSA 1978. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal.

C. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: Laws 1994, ch. 55, § 14; 2003, ch. 409, § 11
2022, ch. 39, § 27.

Delayed repeals. — For delayed repeal of this section,
see 61-5A-30 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of dental health care shall issue an expedited license without an examination to a dentist or dental hygienist licensed in another licensing jurisdiction if the applicant holds a license that is current and in good standing issued by the other licensing jurisdiction, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal, and required the board to determine by rule, and to post

on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are needed; in the section heading, added "expedited licensure"; added new subsection designation "A." and redesignated former Subsections A through G as Paragraphs A(1) through A(7), respectively; in Subsection A, after "the United States", added "or the District of Columbia", and in Paragraph A(1), after "the United States", added "or the District of Columbia"; and added new Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or

different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2003 amendment, effective June 20, 2003, deleted "secretary-treasurer of the" following "The" near the

beginning of the first paragraph; substituted "renewed" for "reviewed" following "and may be" near the middle of Subsection E; and deleted "and regulations" following "and all rules" near the end of Subsection G.

61-5A-14.1. Public-service licensure. (Repealed effective July 1, 2024.)

The board or the committee may issue a temporary public-service license to practice dentistry or dental hygiene to an applicant who is licensed to practice dentistry or dental hygiene in another state or territory of the United States or who is enrolled as a dental resident in a residency program in this state and the commission on dental accreditation has accredited that program. That applicant shall be otherwise qualified to practice dentistry or dental hygiene in this state. The following provisions shall apply:

A. the applicant for public-service licensure shall hold a valid license in good standing in another state or territory of the United States or be enrolled as a dental resident in a residency program in the state that the commission on dental accreditation has accredited;

B. a temporary public-service license issued to a dental residency student who has not taken and passed a clinical examination accepted by the board shall not be renewed after the student has completed the residency program;

C. the applicant shall practice dentistry or dental hygiene under the sponsorship of or in association with a licensed New Mexico dentist or dental hygienist;

D. the public-service license may be issued for those activities as stipulated by the board or committee in the rules of the board. It may be issued upon written application of the applicant when accompanied by such proof of qualifications as the secretary-treasurer of the board or committee, in the secretary-treasurer's discretion, may require. Public-service licensees shall engage in only those activities specified on the public-service license for the time designated, and the public-service license shall identify the licensed New Mexico dentist or dental hygienist who will sponsor or associate with the applicant during the time the applicant practices dentistry or dental hygiene in New Mexico;

E. the sponsoring or associating dentist or dental hygienist shall submit an affidavit attesting to the qualifications of the applicant and the activities the applicant will perform;

F. the public-service license shall be issued for a period not to exceed twelve months and may be renewed upon application and payment of required fees;

G. the application for a public-service license under this section shall be accompanied by a license fee;

H. the public-service licensee shall be required to comply with the Dental Health Care Act and all rules promulgated pursuant to that act; and

I. a dentist or dental hygienist providing dental care services to a charitable dental care project may provide dental care pursuant to a presumptive temporary public-service license valid for a period of no longer than three days. The dentist or dental hygienist shall be otherwise subject to the provisions of this section and board rules governing public-service licensure. This presumptive temporary public-service license is only valid when:

- (1) the dentist or dental hygienist receives no compensation;
- (2) the project is sponsored by an entity that meets the board's definition of "entity" and that the board has approved to undertake the charitable project;
- (3) the dental care is performed within the limits of the license that the dentist or dental hygienist holds in another jurisdiction;
- (4) upon request, the out-of-state dentist or dental hygienist produces any document necessary to verify the dentist's or dental hygienist's credentials; and
- (5) the out-of-state dentist or dental hygienist works under the indirect supervision of a dentist or dental hygienist licensed in this state.

History: Laws 2011, ch. 113, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

Effective dates. — Laws 2011, ch. 113 contained no effective date provision; but, pursuant to N.M. Const., art.

IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

OF 2011, 90 DAYS AFTER THE ADJOURNMENT OF THE LEGISLATURE.

61-5A-15. Content of licenses and certificates; display of licenses and certificates. (Repealed effective July 1, 2024.)

- A. All dental licenses issued by the board shall bear:
 - (1) a serial number;
 - (2) the full name of the licensee;
 - (3) the date of issue;
 - (4) the seal of the board;
 - (5) if the license is a specialty license, the specialty to which practice is limited;
 - (6) the signatures of a majority of the board members; and
 - (7) the attestation of the board president and secretary.
- B. All dental therapy licenses issued by the board shall bear:
 - (1) a serial number;
 - (2) the full name of the licensee;
 - (3) the date of issue;
 - (4) the seal of the board;
 - (5) the signatures of a majority of the board members; and
 - (6) the attestation of the board president and secretary.
- C. All dental hygienist licenses issued by the board shall bear:
 - (1) a serial number;
 - (2) the full name of the licensee;
 - (3) the date of issue;
 - (4) the seal of the board;
 - (5) the signatures of a majority of the committee members; and
 - (6) the attestation of the board president and secretary.
- D. Certificates issued to dental assistants shall bear:
 - (1) a serial number;
 - (2) the full name of the assistant;
 - (3) the date of issue;
 - (4) the date of expiration;
 - (5) the expanded functions certified to perform; and
 - (6) the attestation of the board secretary.
- E. All licenses and certificates shall be displayed in a conspicuous place in the office where the holder practices. The license or certificate shall, upon request, be exhibited to any of the members of the board, the committee or its authorized agent.

History: Laws 1994, ch. 55, § 15; 2019, ch. 107, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2019 amendment, effective June 14, 2019, listed the required contents of a dental therapy license; in the section heading, deleted "license; renewal; retire license" and added "licenses and certificates"; and added new Subsection B and redesignated the succeeding subsections accordingly.

ANNOTATIONS

State's legitimate interest in licensing persons to practice dentistry or dental hygiene is to assure that the individual is competent. 1980 Op. Att'y Gen. No. 80-20.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality, construction and application of statute relating to dental hygienists, 11 A.L.R.2d 724.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 19, 20.

61-5A-16. License and certificate renewals. (Repealed effective July 1, 2024.)

- A. Except as provided in Subsection I of this section, all licensees shall be required to renew their licenses triennially as established by rules of the board.
- B. All dental assistants certified in expanded functions, expanded-function dental auxiliaries and community dental health coordinators shall be required to renew their certificates triennially as established by rules of the board.
- C. The board or committee may establish a method to provide for staggered triennial terms and may prorate triennial renewal fees and impaired dentist and dental hygienist fees until staggered

triennial renewal is established. The fact that a licensee has not received a renewal form from the board or committee shall not relieve the licensee of the duty to renew the license or certificate nor shall such omission on the part of the board or committee operate to exempt the licensee from the penalties for failure to renew the licensee's license or certificate.

D. All licensees shall pay a triennial renewal fee and an impaired dentist and dental hygienist fee, and all licensees shall return a completed renewal application form that includes proof of continuing education or continued competency.

E. Each application for triennial renewal of license shall state the licensee's full name, business address, the date and number of the license and all other information requested by the board or committee.

F. A licensee who fails to submit an application for triennial renewal on or before July 1 but who submits an application for triennial renewal within thirty days thereafter shall be assessed a late fee.

G. A licensee who fails to submit application for triennial renewal between thirty and sixty days of the July 1 deadline may have the licensee's license or certificate suspended. If the licensee renews by that time, the licensee shall be assessed a cumulative late fee.

H. The board or the committee may summarily revoke, for nonpayment of fees or failure to comply with continuing education or continued competency requirements, the license or certificate of a licensee or certificate holder who has failed to renew the license or certificate on or before August 31.

I. A license for a non-dentist owner shall be renewed triennially as established by rules. An application for renewal of a non-dentist owner license shall state the name, business address, date and number of the license and all other information as required by rule of the board. If a non-dentist owner fails to submit the application for renewal of the license by July 1, the board may assess a late fee. If the non-dentist owner fails to submit the application for a renewal license within sixty days of the July 1 renewal deadline, the board may suspend the license. The license of a non-dentist owner may be summarily revoked by the board for nonpayment of fees.

J. Assessment of fees pursuant to this section is not subject to the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

History: Laws 1994, ch. 55, § 16; 2003, ch. 409, § 13; 2011, ch. 113, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2011 amendment, effective June 17, 2011, required dental assistants certified as expanded-function dental auxiliaries or community dental health coordinators to renew their certificates triennially.

The 2003 amendment, effective June 20, 2003, substituted "licensee" for "practitioner" throughout the section; in Subsection A, added "Except as provided in Subsection I of this section" preceding "all licenses" at the beginning, and substituted "of the board" for "and regulations" following "established in rules" at the end; substituted "of the board" for "and regulations" following "established in rules" at the end of Subsection B; substituted "licensees" for "licensed practitioners" following "All" at the beginning of Subsection D; substituted "licensee or certificate holder"

for "practitioner" following "certificate of any" near the middle of Subsection H; and added Subsections I and J.

ANNOTATIONS

State's legitimate interest in licensing persons to practice dentistry or dental hygiene is to assure that the individual is competent. 1980 Op. Att'y Gen. No. 80-20.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 31, 59, 60, 67, 68, 79.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 23.

61-5A-17. Retirement and inactive status; reactivation. (Repealed effective July 1, 2024.)

A. A licensee who wishes to retire from practice shall meet all requirements for retirement as set by rules of the board, and, if the licensee is a dental hygienist, the committee. The licensee shall notify the board or the committee in writing before the expiration of the licensee's current license, and the secretary of the board or the committee shall acknowledge the receipt of notice and record it. If, within a period of three years from the date of retirement, the licensee wishes to resume practice, the applicant shall notify the board or the committee in writing and give proof of completing all requirements as prescribed by rules of the board and the committee to reactivate the license.

B. At any time during the three-year period following retirement, a licensee with a retired New Mexico license may request in writing to the board or the committee that the licensee's license be placed in inactive status. Upon the receipt of the application and fees as determined by the board or the committee and with the approval of the board or the committee, the license may be placed in inactive status.

C. A licensee whose license has been placed in inactive status may not engage in any of the activities contained within the scope of practice of dentistry, dental therapy or dental hygiene in New Mexico described in the Dental Health Care Act.

D. Licensees with inactive licenses must renew their licenses triennially and comply with all the requirements set by the board and, if the licensee is a dental hygienist, by the committee.

E. If a licensee with an inactive license wishes to resume active practice, the licensee must notify the board or, if the licensee is a dental hygienist, the committee, in writing and provide proof of completion of all requirements to reactivate the license as prescribed by rule of the board or the committee. Upon payment of all fees due, the board may reactivate the license and the licensee may resume practice subject to any stipulations of the board or the committee.

F. Inactive licenses must be reactivated or permanently retired within nine years of having been placed in inactive status.

G. Assessment of fees pursuant to this section is not subject to the Uniform Licensing Act.

History: Laws 1994, ch. 55, § 17; 2003, ch. 409, § 14; 2019, ch. 107, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2019 amendment, effective June 14, 2019, included dental therapy within the provisions related to retirement and inactive status for licensees, and specified that the New Mexico dental hygienists committee governs the practice of dental hygiene; in Subsection A, after the subsection designation, deleted "Any dentist or dental hygienist" and added "A licensee", after "retire from practice", deleted "of dentistry or dental hygiene", after "rules of the board, and", added "if the licensee is a dental hygienist", and after "date of retirement, the", deleted "dentist or dental hygienist" and added "licensee"; in Subsection B, after "following retirement, a", deleted "dentist or dental hygienist" and added "licensee", in Subsection C, after "practice of dentistry", added "dental therapy", and

after "described in", deleted "Section 61-5A-4" and added "the Dental Health Care Act"; in Subsection D, after "set by the board and," added "if the licensee is a dental hygienist, by"; and in Subsection E, after "active practice", deleted "of dentistry or dental hygiene", after "notify the board or", added "if the licensee is a dental hygienist", and after "may resume practice", deleted "of dentistry or dental hygiene".

The 2003 amendment, effective June 20, 2003, inserted the Subsection A designation and added Subsections B through G; in Subsection A, substituted "of the board and the committee" for "and regulation" following "as set by rules" near the beginning, substituted "licensee's" for "practitioner's" near the middle, substituted "three years" for "five years" following "within a period of" near the middle, and substituted "of the board and the committee" for "and regulations" following "as prescribed by rules" near the end.

61-5A-18. Practicing without a license; penalty. (Repealed effective July 1, 2024.)

A. Any person who practices dentistry or who attempts to practice dentistry without first complying with the provisions of the Dental Health Care Act and without being the holder of a license entitling the practitioner to practice dentistry in New Mexico is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of the Criminal Sentencing Act [Chapter 31, Article 18 NMSA 1978] to imprisonment for a definite period not to exceed eighteen months and, in the discretion of the sentencing court, to a fine not to exceed five thousand dollars (\$5,000), or both. Each occurrence of practicing dentistry or attempting to practice dentistry without complying with the Dental Health Care Act shall be a separate violation.

B. Any person who practices as a dental hygienist or who attempts to practice as a dental hygienist without first complying with the provisions of the Dental Health Care Act and without being the holder of a license entitling the practitioner to practice as a dental hygienist in New Mexico is guilty of a misdemeanor and upon conviction shall be sentenced under the provisions of the Criminal Sentencing Act to imprisonment for a definite period less than one year and, in the discretion of the sentencing court, to a fine not to exceed one thousand dollars (\$1,000), or both. Each occurrence of practicing as a dental hygienist or attempting to practice as a dental hygienist without complying with the Dental Health Care Act shall be a separate violation.

C. A person that functions or attempts to function as a non-dentist owner or who is an officer of a corporate entity that functions or attempts to function as a non-dentist owner in New Mexico without first complying with the provisions of the Dental Health Care Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of the Criminal Sentencing Act to imprisonment for a definite period not to exceed one year and, in the discretion of the sentencing court, to a fine not to exceed one thousand dollars (\$1,000), or both. Each occurrence of functioning as a non-dentist owner without complying with the Dental Health Care Act shall be a separate violation.

D. The attorney general or district attorney shall prosecute all violations of the Dental Health Care Act.

E. Upon conviction of any person for violation of any provision of the Dental Health Care Act, the convicting court may, in addition to the penalty provided in this section, enjoin the person from any further or continued violations of the Dental Health Care Act and enforce the order of contempt proceedings.

History: Laws 1994, ch. 55, § 18; 2003, ch. 409, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2003 amendment, effective June 20, 2003, substituted "less than" for "not to exceed" following "for

a definite period" near the middle of Subsection B; and added present Subsection C and redesignated the subsequent subsections accordingly.

61-5A-19. Reinstatement of revoked or suspended license. (Repealed effective July 1, 2024.)

A. Unless otherwise stated in the order of revocation, a motion for reinstatement of a revoked license may not be filed for a period of at least three years from the effective date of the revocation.

B. If the motion for reinstatement is denied, no further motions for reinstatement shall be considered for a period of one year.

C. A licensee who has been suspended for a specific period of time shall be automatically reinstated at the expiration of the period specified in the order of suspension. The suspended licensee shall automatically be reinstated as of the day after the expiration of the period of suspension; provided that prior to the expiration of such time if the administrative prosecutor has filed with the board or committee the written objections, the suspended licensee shall not be automatically reinstated. Should objections be filed, the petition for reinstatement shall be referred to the board or committee for hearing pursuant to provisions of Subsection E of this section.

D. Procedure for reinstatement of licensees who have been suspended for an indefinite period of time is as follows:

(1) a licensee who has been suspended for an indefinite period of time may, at any time after complying with the conditions of reinstatement, file a petition for reinstatement with the board or committee;

(2) the petition shall be referred to the board or committee for hearing pursuant to provisions of Subsection E of this section; and

(3) if the motion for reinstatement is denied, no further motions for reinstatement will be considered for a period of one year.

E. Procedure for reinstatement hearings is as follows:

(1) applications for reinstatement shall be referred to the board or, if the application is for reinstatement of a license to practice dental hygiene, to the committee for hearing if the applicant meets the criteria set forth in this section;

(2) the board or committee shall schedule a hearing as soon as practical at which the applicant shall have the burden of demonstrating that the applicant has the moral qualifications, that the applicant is once again fit to resume the practice of dentistry, dental therapy or dental hygiene and that the resumption of the applicant's practice of dentistry, dental therapy or dental hygiene will not be detrimental to the public interest;

(3) the board or committee shall file its findings of fact, conclusions of law and decision within ninety days of the hearing; and

(4) the board's or committee's decision to refuse to reinstate a license shall not be reviewable except for an abuse of discretion.

History: Laws 1994, ch. 55, § 19; 2019, ch. 107, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2019 amendment, effective June 14, 2019, included dental therapy licensees within the provisions regarding reinstatement of licensees whose licenses have been suspended or revoked, and specified that the New Mexico dental hygienists committee governs the practice of dental hygiene; in Subsection C, after "The suspended", deleted "dentist or dental hygienist will" and added "licensee shall", and after "the suspended", deleted "dentist

or dental hygienist" and added "licensee"; in Subsection D, deleted "Suspended dentists or dental hygienists indefinite suspension" and added "Procedure for reinstatement of licensee who have been suspended for an indefinite period of time is as follows"; and in Subsection E, in Paragraph E(1), after "referred to the board or", added "if the application is for reinstatement of a license to practice dental hygiene, to the"; and in Paragraph E(2), after each occurrence of "practice of dentistry", added "dental therapy".

61-5A-20. Fees. (Repealed effective July 1, 2024.)

Except as provided in Section 61-1-34 NMSA 1978, the board and the committee shall establish a schedule of reasonable fees not to exceed the following:

	Dentists	Dental Hygienists
A. licensure by examination	\$ 1,500	\$ 1,000
B. licensure by credential	\$ 3,000	\$ 1,500
C. specialty license by examination	\$ 1,500	
D. specialty license by credential	\$ 3,000	
E. temporary license		
48 hours	\$ 50	\$ 50
six months	\$ 300	\$ 200
12 months	\$ 450	\$ 300
F. application for certification in local anesthesia		\$ 40
G. examination in local anesthesia		\$ 150
H. triennial license renewal	\$ 600	\$ 450
I. late renewal	\$ 100	\$ 100
J. reinstatement of license	\$ 450	\$ 300
K. administrative fees	\$ 300	\$ 300
L. impaired dentist or dental hygienist	\$ 150	\$ 75
M. assistant, expanded-function dental auxiliary or community dental health coordinator certificate		\$ 100
N. application for certification for collaborative practice		\$ 150
O. annual renewal for collaborative practice		\$ 50
P. application for inactive status	\$ 50	\$ 50
Q. triennial renewal of inactive license	\$ 90	\$ 90
	Non-dentist Owner	
R. non-dentist owners license (initial)		\$ 300
S. non-dentist owners license triennial renewal		\$ 150
	Dental Therapists	
T. dental therapist license (initial)		\$ 1,000
U. dental therapist license triennial renewal		\$ 300.

History: Laws 1994, ch. 55, § 20; 2003, ch. 409, § 16; 2011, ch. 113, § 12; 2019, ch. 107, § 7; 2020, ch. 6, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in the introductory clause, and added "Except as provided in Section 61-1-34 NMSA 1978".

The 2019 amendment, effective June 14, 2019, provided a schedule of fees for dental therapy licenses and

license renewals; after Subsection S, added the heading "Dental Therapists", and added new Subsections T and U.

The 2011 amendment, effective June 17, 2011, imposed a fee for expanded-function dental auxiliary and community dental health coordinator certificates.

The 2003 amendment, effective June 20, 2003, substituted "600" for "450" and "450" for "300" in Subsection H; substituted "300" for "200" and "300" for "200" in Subsection K; and added Subsections N through S.

61-5A-21. Disciplinary proceedings; application of Uniform Licensing Act. (Repealed effective July 1, 2024.)

A. In accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and rules of the board, the board and, as relates to dental hygienist licensure, committee may fine and may deny, revoke, suspend, stipulate or otherwise limit any license or certificate, including those of licensed non-dentist owners, held or applied for under the Dental Health Care Act, upon findings by the board or the committee that the licensee, certificate holder or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license or certificate;
- (2) has been convicted of a crime punishable by incarceration in a federal prison or state penitentiary; provided a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of such conviction;
- (3) is guilty of gross incompetence or gross negligence, as defined by rules of the board, in the practice of dentistry, dental therapy, dental hygiene or dental assisting;
- (4) is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such degree as to render the licensee unfit to practice;
- (5) is guilty of unprofessional conduct as defined by rule;
- (6) is guilty of any violation of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];
- (7) has violated any provisions of the Dental Health Care Act or rule or regulation of the board or, as relates to the practice of dental hygiene, the committee;
- (8) is guilty of willfully or negligently practicing beyond the scope of licensure;
- (9) is guilty of practicing dentistry, dental therapy or dental hygiene without a license or aiding or abetting the practice of dentistry, dental therapy or dental hygiene by a person not licensed under the Dental Health Care Act;
- (10) is guilty of obtaining or attempting to obtain any fee by fraud or misrepresentation or has otherwise acted in a manner or by conduct likely to deceive, defraud or harm the public;
- (11) is guilty of patient abandonment;
- (12) is guilty of failing to report to the board any adverse action taken against the licensee by a licensing authority, peer review body, malpractice insurance carrier or other entity as defined in rules of the board and the committee;
- (13) has had a license, certificate or registration to practice as a dentist, dental therapist or dental hygienist revoked, suspended, denied, stipulated or otherwise limited in any jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts described in this subsection. A certified copy of the decision of the jurisdiction taking such disciplinary action will be conclusive evidence; or
- (14) has failed to furnish the board, its investigators or its representatives with information requested by the board or the committee in the course of an official investigation.

B. Disciplinary proceedings may be instituted by sworn complaint by any person, including a board or committee member, and shall conform with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

C. Licensees and certificate holders shall bear the costs of disciplinary proceedings unless exonerated.

D. Any person filing a sworn complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

E. Licensees whose licenses are in a probationary status shall pay reasonable expenses for maintaining probationary status, including laboratory costs when laboratory testing of biological fluids or accounting costs when audits are included as a condition of probation.

F. A dentist, dental hygienist or dental therapist practicing teledentistry is subject to the provisions of this section.

History: Laws 1994, ch. 55, § 21; 2003, ch. 409, § 17; 2019, ch. 107, § 8; 2021, ch. 63, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, clarified that a dentist, dental hygienist or dental therapist practicing teledentistry is subject to disciplinary proceedings pertaining to licensure; and added Subsection F.

The 2019 amendment, effective June 14, 2019, included dental therapists within the provisions regarding disciplinary proceedings, and specified that dental hygienists are under the governance of the New Mexico dental hygienists committee; in Subsection A, in the introductory clause, after "the board and" added "as it relates to dental hygienist licensure", in Paragraph A(3), after "the practice of dentistry", added "dental therapy", in Paragraph A(7), after "regulation of the board or", added "as relates to the practice of dental hygiene", in Paragraph A(9), after "practice of dentistry", added "dental therapy", and in Paragraph A(13), after "practice of dentistry", added "dental therapist".

The 2003 amendment, effective June 20, 2003, deleted "judicial review" following "Disciplinary proceedings" in the section heading; deleted "and regulations" following "rules" throughout the section; inserted "including those of licensed non-dentist owners" following "license or certificate" near the middle of Subsection A; substituted "rules" for "regulations" following "as defined by" near the middle of Paragraph A(3); deleted "or regulation" following "defined by rule" at the end of Paragraph A(5); substituted "licensure" for "practice" following "beyond the scope of" at the end of Paragraph A(8); and substituted "of the board and the committee" for "and regulations" following "defined in rules" at the end of Paragraph A(12).

ANNOTATIONS

Burden of proof for suspension of license. — The standard of proof utilized by the former board of dentistry in determining that a dentist's license should be suspended was a preponderance of the evidence. *Foster v. Board of Dentistry*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

Conviction as sufficient basis for revocation. — Since a dentist was convicted of four counts of making or permitting a false claim for reimbursement for public assistance services, a conviction itself, as distinguished from the underlying conduct, is a sufficient basis for revoking a dental license. *Weiss v. N.M. Bd. of Dentistry*, 1990-NMSC-077, 110 N.M. 574, 798 P.2d 175.

Standard for use of conviction to revoke license. — In order for a conviction to be used as a basis for a license revocation, the licensing agency must explicitly state its reasons for a decision prohibiting the licensee from engaging in his or her employment or profession, and the agency must find that the licensee has not been sufficiently rehabilitated to warrant the public trust and must give reasons for this finding. *Weiss v. N.M. Bd. of Dentistry*, 1990-NMSC-077, 110 N.M. 574, 798 P.2d 175.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 100, 102, 106, 107.

Validity of statute providing for revocation of license, 5 A.L.R. 94, 79 A.L.R. 323.

Grounds for revocation of license, 54 A.L.R. 1504, 82 A.L.R. 1184.

Restoration of license wrongfully revoked, 95 A.L.R. 1424.

Moral turpitude, what offenses involve, within statute providing grounds for denying license, 109 A.L.R. 1459.

Conviction, what amounts to, within statute making conviction ground for refusing to grant license, 113 A.L.R. 1179.

Statutory power to revoke or suspend dentist's license for "unprofessional conduct" as exercisable without antecedent adoption of regulation as to what shall constitute such conduct, 163 A.L.R. 909.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Conviction as proof of ground for revocation or suspension of dentist's license where a conviction as such is not an independent cause, 167 A.L.R. 228.

Governing law as to existence or character of offense for which one has been convicted in a federal court, or court of another state, as bearing upon disqualification to practice as dentist, 175 A.L.R. 803.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Physician's or other healer's conduct, or conviction of offense, not directly related to medical practice, as ground for disciplinary action, 34 A.L.R.4th 609.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 A.L.R.4th 248.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 38 to 43.

61-5A-22. Anesthesia administration. (Repealed effective July 1, 2024.)

A. The board shall establish rules or regulations pertaining to the administration of nitrous oxide analgesia, conscious sedation, deep sedation and general anesthesia by dentists.

B. The board or its agent may evaluate credentials, facilities, equipment, personnel and procedures prior to issuing permits to allow the administration of agents that are utilized in providing analgesia, sedation or general anesthesia and may re-evaluate the same at its discretion.

C. The board may suspend or revoke the license of any dentist who fails to comply with anesthesia related rules or regulations of the board.

History: Laws 1994, ch. 55, § 22.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5A-23. Reporting of settlements and judgments; professional review actions; immunity from civil damages. (Repealed effective July 1, 2024.)

A. All entities that make payments under a policy of insurance, self-insurance or otherwise in settlement or satisfaction of a judgment in a dental malpractice action or claim, all hospitals, all health care entities and all professional review bodies shall report to the board all payments relating to malpractice actions or claims arising in New Mexico and all appropriate professional review actions of licensees.

B. No hospitals, health care entities, insurance carriers or professional review bodies required to report under this section, which provide such information in good faith, shall be subject to suit for civil damages as a result thereof.

C. Any hospital, health care entity, insurance carrier or professional review body failing to comply with the reporting requirements established in this section shall be subject to a civil penalty not to exceed two thousand dollars (\$2,000).

History: Laws 1994, ch. 55, § 23.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5A-24. Injunction to stop unlicensed dental or dental hygiene practice. (Repealed effective July 1, 2024.)

A. The attorney general, district attorney, the board, the committee or any citizen of any county where any person practices dentistry or dental hygiene without possessing a valid license to do so may, in accordance with the laws of New Mexico governing injunctions, maintain an action in the name of the state. To enjoin such person from practicing dentistry or dental hygiene until a valid license to practice dentistry or dental hygiene is secured and any person who has been enjoined who violates the injunction shall be punished for contempt of court, provided that the injunction does not relieve any person practicing dentistry or dental hygiene without a valid license from a criminal prosecution therefore as provided by law.

B. In charging any person in a complaint for injunction, or in an affidavit, information or indictment with practicing dentistry or dental hygiene without a valid license, it is sufficient to charge that the person did, upon a certain day and in a certain county, engage in the practice of dentistry or dental hygiene without a valid license, without averring any further or more particular facts concerning the same.

History: Laws 1994, ch. 55, § 24.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

Cross references. — For injunctions generally, see Rules 1-065 and 1-066 NMRA.

ANNOTATIONS

Dentists may form a professional corporation for the practice of dentistry so long as the name of the corporation contains all of the names of the members of the professional corporation plus the words "professional corporation" or some other word or abbreviation of a word authorized by the Professional Corporations Act. 1969 Op. Att'y Gen. No. 69-63.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 87.

Unlicensed dentist's right to recover for services, 30 A.L.R. 860, 42 A.L.R. 1226, 118 A.L.R. 646.

Right of one licensed as a regular physician to practice dentistry, 86 A.L.R. 624.

Corporation or individual not himself licensed, right to practice dentistry through licensed employees, 103 A.L.R. 1240.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 57.

61-5A-25. Protected actions and communications. (Repealed effective July 1, 2024.)

A. No member of the board or the committee or any ad hoc committee appointed by the board or the committee shall bear liability or be subject to civil damages or criminal prosecutions for any action undertaken or performed within the proper functions of the board or the committee.

B. All written and oral communication made by any person to the board or the committee relating to actual or potential disciplinary action, which includes complaints made to the board or the committee, shall be confidential communications and are not public records for the purposes of the Public Records Act [Chapter 14, Article 3 NMSA 1978]. All data, communications and information acquired, prepared or disseminated by the board or the committee relating to actual or potential disciplinary action or its investigation of complaints shall not be disclosed except to the extent necessary to carry out the purposes of the board or the committee or in a judicial appeal from the actions of the board or the committee or in a referral of cases made to law enforcement agencies, national database clearinghouses or other licensing boards.

C. Information contained in complaint files is public information and subject to disclosure when the board or the committee acts on a complaint and issues a notice of contemplated action or reaches a settlement prior to the issuance of a notice of contemplated action.

D. No person or legal entity providing information to the board or the committee, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

History: Laws 1994, ch. 55, § 25; 2003, ch. 409, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2003 amendment, effective June 20, 2003, added "or in a referral of cases made to law enforcement

agencies, national database clearinghouses or other licensing boards" following "or the committee" at the end of Subsection B; and added "or reaches a settlement prior to the issuance of a notice of contemplated action" following "contemplated action" at the end of Subsection C.

61-5A-26. Fund established. (Repealed effective July 1, 2024.)

A. There is created in the state treasury the "board of dental health care fund".

B. All money received by the board and money collected under the Dental Health Care Act shall be deposited with the state treasurer. The state treasurer shall credit this money to the board of dental health care fund except money collected for the impaired assessment, which shall be held separate from the board fund. Fees collected by the board from fines shall be deposited in the board of dental health care fund and, at the discretion of the board and the committee, may be transferred into the impaired dentists and dental hygienists fund.

C. Payment out of the board of dental health care fund shall be on vouchers issued and signed by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. Except as provided in Paragraph (7) of Subsection C of Section 3 of this 2017 act, all amounts paid into the board of dental health care fund are subject to the order of the board and are to be used only for meeting necessary expenses incurred in executing the provisions and duties of the Dental Health Care Act. All money unused at the end of any fiscal year shall remain in the fund for use in accordance with provisions of the Dental Health Care Act.

E. All funds that have accumulated to the credit of the board under any previous law shall be continued for use by the board in administration of the Dental Health Care Act.

History: Laws 1994, ch. 55, § 26; 2003, ch. 409, § 19; 2017 (1st S.S.), ch. 1, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

Compiler's notes. — "Paragraph (7) of Subsection C of Section 3 of this 2017 act", referred to in Subsection D of this section, was a fifty thousand dollar (\$50,000) transfer from the board of dental health care fund to the fiscal year 2017 appropriation account of the general fund.

The 2017 (1st S.S.) amendment, effective May 26, 2017, authorized the transfer of funds from the board of dental health care fund to the fiscal year 2017 appropriation account of the general fund; in Subsection D, after the subsection designation, added "Except as provided in Paragraph (7) of Subsection C of Section 3 of this 2017 act".

The 2003 amendment, effective June 20, 2003, inserted "of dental health care" following "money to the board" near the middle of the second sentence of Subsection B.

61-5A-27. Criminal Offender Employment Act. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Dental Health Care Act.

History: Laws 1994, ch. 55, § 27.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5A-28. Temporary provision. (Repealed effective July 1, 2024.)

Until revised, rescinded or modified by the board or committee, regulations adopted under the Dental Act shall remain in effect upon enactment of the Dental Health Care Act and be enforced by the board or the committee.

History: Laws 1994, ch. 55, § 28.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5A-29. Licensure or certification under prior law. (Repealed effective July 1, 2024.)

A. Any person licensed as a dentist or hygienist under any prior laws of this state, whose license is valid on the effective date of the Dental Health Care Act, is held to be licensed under the Dental Health Care Act and is entitled to renewal of his license as provided in that act.

B. Any person certified under any prior laws of this state, whose certificate is valid on the effective date of the Dental Health Care Act, is held to be certified under the Dental Health Care Act and is entitled to renewal of his certificate as provided in that act.

History: Laws 1994, ch. 55, § 29.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5A-30. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The New Mexico board of dental health care is terminated on July 1, 2023 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act [61-5B-1 through 61-5B-11 NMSA 1978] until July 1, 2024. Effective July 1, 2024, the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act are repealed.

History: Laws 1994, ch. 55, § 42; 1997, ch. 46, § 5; 2003, ch. 409, § 20; 2003, ch. 428, § 4; 2009, ch. 96, § 4; 2015, ch. 119, § 4.

The 2015 amendment, effective June 19, 2015, extended the termination date for the New Mexico board of dental health care to July 1, 2023, and the repeal date to July 1, 2024.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, inserted "termination of agency life" in the section heading; in the first sentence substituted "2009" for "2003" and substituted "2010" for "2004" in the second and third sentences. Identical amendments to this section were made by Laws 2003, ch. 409, § 70. The section was set out as amended by Laws 2003, ch. 428, § 4. See 12-1-8 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "2003" for "1997" in the first sentence and substituted "2004" for "1998" in the second and third sentences.

ARTICLE 5B**Impaired Dentists and Dental Hygienists**

Sec.

61-5B-1. Short title. (Repealed effective July 1, 2024.)

61-5B-2. Definitions. (Repealed effective July 1, 2024.)

61-5B-3. Grounds for restriction, suspension, revocation, stipulation or other limitation of license. (Repealed effective July 1, 2024.)

61-5B-4. Board or dental hygienists committee; additional powers and duties as related to the Impaired Dentists and Dental Hygienists Act. (Repealed effective July 1, 2024.)

61-5B-5. Examination by committee. (Repealed effective July 1, 2024.)

Sec.

61-5B-6. Voluntary restriction of licensure. (Repealed effective July 1, 2024.)

61-5B-7. Report to the board or dental hygienists committee; action. (Repealed effective July 1, 2024.)

61-5B-8. Proceedings. (Repealed effective July 1, 2024.)

61-5B-9. Reinstatement of license. (Repealed effective July 1, 2024.)

61-5B-10. Impaired dentists and dental hygienists treatment program. (Repealed effective July 1, 2024.)

61-5B-11. Impaired dentists and dental hygienists fund created. (Repealed effective July 1, 2024.)

61-5B-1. Short title. (Repealed effective July 1, 2024.)

Sections 31 [30] through 41 [61-5B-1 to 61-5B-11 NMSA 1978] of this act shall be cited as the "Impaired Dentists and Dental Hygienists Act".

History: Laws 1994, ch. 55, § 30.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Notwithstanding the language "Sections 31 through 41 of this act," the Impaired Dentists and Dental Hygienists Act includes Laws 1994, ch. 55, § 30, compiled as 61-5B-1 NMSA 1978.

61-5B-2. Definitions. (Repealed effective July 1, 2024.)

As used in the Impaired Dentists and Dental Hygienists Act:

- A. "board" means the New Mexico board of dental health care;
- B. "dental hygienists committee" means the New Mexico dental hygienists committee;
- C. "dentistry or dental hygiene" means the practice of dentistry or dental hygiene; and
- D. "licensee" means a dentist or dental hygienist licensed by the board.

History: Laws 1994, ch. 55, § 31; 2003, ch. 409, § 21.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted "of the New Mexico board of dental health care" following "dental hygienists committee" at the end of Subsection B.

61-5B-3. Grounds for restriction, suspension, revocation, stipulation or other limitation of license. (Repealed effective July 1, 2024.)

The license of any dentist or dental hygienist to practice dentistry or dental hygiene in this state shall be subject to restriction, suspension, revocation, stipulation or may otherwise be limited in case of inability of the licensee to practice with reasonable skill and safety to patients by reason of one or more of the following:

- A. mental illness;
- B. physical illness, including but not limited to deterioration through the aging process or loss of motor skills;
- C. habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978]; or
- D. habitual or excessive use or abuse of alcohol.

History: Laws 1994, ch. 55, § 32.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

61-5B-4. Board or dental hygienists committee; additional powers and duties as related to the Impaired Dentists and Dental Hygienists Act. (Repealed effective July 1, 2024.)

A. If the board or dental hygienists committee has reasonable cause to believe that a person licensed to practice dentistry or dental hygiene is unable to practice with reasonable skill and safety to patients because of a condition described in the Impaired Dentists and Dental Hygienists Act, the board shall cause an examination of such licensee to be made and shall, following the examination, take appropriate action within the provisions of the Impaired Dentists and Dental Hygienists Act.

B. Examination of a licensee pursuant to an order of the board shall be conducted by an examining committee designated by the board. Each examining committee shall be composed of two duly licensed dentists or two duly licensed dental hygienists if the licensee is a dental hygienist and two duly licensed physicians, one of whom shall be a psychiatrist who is knowledgeable and experienced in the field of chemical dependency if a question of mental illness or dependency is involved. Whenever possible, examining committee members shall be selected for their knowledge or experience in the areas of alcoholism, chemical dependency, mental health and geriatrics and may be rehabilitated impaired dentists, dental hygienists or physicians. In designating the members of such examining committee, the board may consider nominations from the New Mexico dental association for the dentist member, the New Mexico dental hygienists' association for dental hygiene members thereof and nomination from the New Mexico medical society for the physician members thereof. No current members of the board, dental hygienists committee or New Mexico board of medical examiners [New Mexico medical board] shall be designated as a member of an examining committee.

History: Laws 1994, ch. 55, § 33.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5B-5. Examination by committee. (Repealed effective July 1, 2024.)

A. The examining committee assigned to examine a licensee pursuant to referral by the board shall conduct an examination of the licensee for the purpose of determining the fitness of the licensee to practice dentistry or dental hygiene with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the board. The findings and recommendations shall be based on findings by the examining committee that the licensee examined possesses one or more of the impairments set forth in the Impaired Dentists and Dental Hygienists Act and such impairment does, in fact, affect the ability of the licensee to skillfully and safely practice dentistry or dental hygiene. The examining committee shall order the licensee to appear before it for hearing and give the licensee fifteen days notice of time and place of the hearing, together with a statement of the cause for such examination. The notice shall be served upon the licensee either personally or by registered or certified mail with return receipt requested.

B. If the examining committee, in its discretion, deems a mental or physical examination of the licensee necessary to its determination of the fitness of the licensee to practice, the examining committee shall order the licensee to submit to such examination. Any person licensed to practice dentistry or dental hygiene in this state shall, by so practicing or by making or filing an annual registration to practice dentistry or dental hygiene in this state, be deemed to have:

(1) given consent to submit to mental or physical examination when so directed by the examining committee; and

(2) waived all objections to the admissibility of the report of the examining committee to the board or the dental hygienists committee on the grounds of privileged communication.

C. Any licensee who submits to a diagnostic mental or physical examination as ordered by the examining committee shall have a right to designate an accompanying individual to be present at the examination and make an independent report to the board.

D. Failure of a licensee to comply with an examining committee order under Subsection B of this section to appear before it for hearing or to submit to mental or physical examination under this section shall be reported by the examining committee to the board or dental hygienists committee and, unless due to circumstances beyond the control of the licensee, shall be grounds for the immediate and summary suspension by the board of the licensee to practice dentistry or dental hygiene in this state until further order of the board.

History: Laws 1994, ch. 55, § 34.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5B-6. Voluntary restriction of licensure. (Repealed effective July 1, 2024.)

A. A licensee may request in writing to the board a restriction to practice under his existing license, and the board and the dental hygienists committee shall have authority, if it deems appropriate, to attach stipulations to the licensure of the licensee to practice dentistry or dental hygiene within specified limitations and waive the commencement of any proceeding. Removal of a voluntary restriction on licensure to practice dentistry or dental hygiene shall be subject to the procedure for reinstatement of license. As a condition for accepting such voluntary limitation of practice, the board may require each licensee to:

- (1) agree to and accept care, counseling or treatment of physicians or other appropriate health care providers acceptable to the board;
- (2) participate in a program of education prescribed by the board; or
- (3) practice under the direction of a dentist acceptable to the board for a specified period of time.

B. Subject to the provisions of the Impaired Dentists and Dental Hygienists Act, a violation of any of the conditions of the voluntary limitation of practice statement by such licensee shall be due cause for the refusal of renewal, or the suspension or revocation, of the license by the board.

History: Laws 1994, ch. 55, § 35. **Delayed repeals.** — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5B-7. Report to the board or dental hygienists committee; action. (Repealed effective July 1, 2024.)

A. The examining committee shall report to the board or the dental hygienists committee its findings on the examination of the licensee, the determination of the examining committee as to the fitness of the licensee to engage in the practice of dentistry or dental hygiene with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and any intervention that the examining committee may recommend. Such recommendation by the examining committee shall be advisory only and shall not be binding on the board.

B. The board or dental hygienists committee may accept or reject the recommendation of the examining committee to permit a licensee to continue to practice with or without any restriction on his licensure to practice dentistry or dental hygiene or may refer the matter back to the examining committee for further examination and report thereon.

C. In the absence of a voluntary agreement by a licensee for restriction of the licensure of the dentist or the dental hygienist to practice dentistry or dental hygiene, any licensee shall be entitled to a hearing before the board under and in accordance with the procedure contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] and a determination on the evidence as to whether or not restriction, suspension or revocation of licensure shall be imposed.

History: Laws 1994, ch. 55, § 36. **Delayed repeals.** — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5B-8. Proceedings. (Repealed effective July 1, 2024.)

A. The board may formally proceed against a licensee under the Impaired Dentists and Dental Hygienists Act in accordance with the procedures contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

B. When the licensee being considered for action is a dental hygienist, the board shall act upon recommendation of the dental hygienists committee on all aspects of procedures in the Impaired Dentists and Dental Hygienists Act.

C. At the conclusion of the hearing, the board or the dental hygienists committee shall make the following findings:

- (1) whether or not the licensee is impaired by one of the grounds for restriction, suspension or revocation listed herein;
- (2) whether or not such impairment does in fact limit the ability of the licensee to practice dentistry or dental hygiene skillfully and safely;
- (3) to what extent such impairment limits the ability of the licensee to practice dentistry or dental hygiene skillfully and safely and whether the board or dental hygienists committee finds that such impairment is such that the license should be suspended, revoked or restricted in the licensee's practice of dentistry or dental hygiene; and
- (4) if the finding recommends suspension or restriction of the ability of the licensee to practice dentistry or dental hygiene, then the board shall make specific recommendations as to the length and nature of the suspension or restriction and shall recommend how such suspension or restriction shall be carried out and supervised.

D. At the conclusion of the hearing, the board or the dental hygienists committee shall make a determination of the merits and may order one or more of the following:

- (1) placement of the licensee on probation on such terms and conditions as it deems proper for the protection of the public;
- (2) suspension or restriction of the license of the licensee to practice dentistry or dental hygiene for the duration of the licensee's impairment;
- (3) revocation of the license of the licensee to practice dentistry or dental hygiene; or
- (4) reinstatement of the license of the licensee to practice dentistry or dental hygiene without restriction.

E. The board may temporarily suspend the license of any licensee without a hearing, simultaneously with the institution of proceedings under the Uniform Licensing Act, if it finds that the evidence in support of the determination of the examining committee is clear and convincing and that continuation in practice would constitute an imminent danger to public health and safety.

F. Neither the record of the proceeding nor any order entered against a licensee may be used against the licensee in any other legal proceeding except upon judicial review.

History: Laws 1994, ch. 55, § 37.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5B-9. Reinstatement of license. (Repealed effective July 1, 2024.)

A. A licensee whose licensure has been restricted, suspended or revoked under the Impaired Dentists and Dental Hygienists Act, voluntarily or by action of the board, shall have a right at reasonable intervals to petition for reinstatement of the license and to demonstrate that the licensee can resume the competent practice of dentistry or dental hygiene with reasonable skill and safety to patients.

B. The petition shall be made in writing. If the licensee is a dental hygienist, the dental hygienists committee shall be advised and given all information so that their recommendation can be given to the board.

C. Action of the board on the petition shall be initiated by referral to and examination by the examining committee.

D. The board may, in its discretion, upon written recommendation of the examining committee, restore the licensure of the licensee on a general or limited basis.

History: Laws 1994, ch. 55, § 38.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5B-10. Impaired dentists and dental hygienists treatment program. (Repealed effective July 1, 2024.)

A. The board has the authority to enter into an agreement with a nonprofit corporation to implement an impaired dentists and dental hygienists treatment program.

B. For the purposes of this section, "impaired dentists and dental hygienists treatment program" means a program of care and rehabilitation services provided by those organizations authorized by the board to provide for the detention, intervention and monitoring of an impaired dentist or dental hygienist.

History: Laws 1994, ch. 55, § 39.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

61-5B-11. Impaired dentists and dental hygienists fund created. (Repealed effective July 1, 2024.)

A. There is created an "impaired dentists and dental hygienist fund".

B. The fund shall be initially established by an assessment to all licensees as determined by the board and the dental hygienists committee.

C. All funds received by the board for an impaired assessment, either special or at time of relicensure, shall be deposited with the state treasurer. The state treasurer shall credit this money to the impaired dentists and dental hygienists fund.

D. Payments out of the fund shall be on vouchers issued and signed by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the responsibilities of the board as approved by that department.

E. All amounts paid into the fund are subject to the order of the board and are to be used only for meeting necessary expenses incurred in executing the provisions and duties of the Impaired Dentists and Dental Hygienists Act. All money unused at the end of any fiscal year shall remain in the fund for use in accordance with provisions of the Impaired Dentists and Dental Hygienists Act.

F. Licensees shall be assessed an impaired fee at the time of renewal. The amount of the fee shall be determined by the board and the committee and shall be established to meet the need for enforcing the Impaired Dentists and Dental Hygienists Act.

G. The fund shall be used for the purpose of administration, testing, monitoring, hearings and consultation fees by the board or dental hygienists committee or their agent, which are necessary to enforce the Impaired Dentists and Dental Hygienists Act. It is not the purpose of the fund to pay for treatment of impaired dentists and dental hygienists.

History: Laws 1994, ch. 55, § 40.

Delayed repeals. — For delayed repeal of this section, see 61-5A-30 NMSA 1978.

ARTICLE 5C

Dental Amalgam Waste Reduction

Sec.

61-5C-1. Short title.

61-5C-2. Definitions.

61-5C-3. Installation of amalgam separator required.

Sec.

61-5C-4. Exemption for certain dental offices.

61-5C-5. Reporting.

61-5C-6. Enforcement.

61-5C-1. Short title.

Sections 1 through 6 [61-5C-1 to 61-5C-6 NMSA 1978] of this act may be cited as the "Dental Amalgam Waste Reduction Act".

History: Laws 2013, ch. 206, § 1.

IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art. 10, § 2, was effective June 14, 2013, 90 days after the adjournment of the legislature.

61-5C-2. Definitions.

As used in the Dental Amalgam Waste Reduction Act:

A. "amalgam" means a dental restorative material that is typically composed of mercury, silver, tin and copper, along with other metallic elements, and that is used by a dentist to restore a cavity in a tooth;

B. "amalgam separator" means a device that removes dental amalgam from the waste stream prior to discharge into either the local public wastewater system or a private septic system and that meets a minimum removal efficiency in accordance with international standards contained in *ISO 11143, Dental Equipment-Amalgam Separators*, published by the international organization for standardization; and

C. "dental office" means a fixed physical structure in which dental services are provided to patients by dentists and dental professionals licensed or certified by the New Mexico board of dental health care under the management of a licensed owner, operator or designee.

History: Laws 2013, ch. 206, § 2.

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

61-5C-3. Installation of amalgam separator required.

By December 31, 2014, a dental office shall install an appropriately sized amalgam separator system and, upon inspection for cause, shall demonstrate to the New Mexico board of dental health care proper installation, operation, maintenance and amalgam waste recycling or disposal in accordance with an amalgam separator manufacturer's recommendations. The New Mexico board of dental health care shall consider noncompliance with the Dental Amalgam Waste Reduction Act as unprofessional conduct subject to the penalties and discipline of the board pursuant to the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] and the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978].

History: Laws 2013, ch. 206, § 3.

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

61-5C-4. Exemption for certain dental offices.

An amalgam separator system shall not be required for the offices or clinical site of:

- A. a dental office that is not engaged in amalgam placement, removal or modification;
- B. an orthodontist;
- C. a periodontist;
- D. an oral maxillofacial surgeon;
- E. an oral maxillofacial radiologist;
- F. an oral pathologist; or
- G. a portable dental office without a fixed connection for wastewater discharge.

History: Laws 2013, ch. 206, § 4.

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

61-5C-5. Reporting.

A dental office shall report the model and size of its amalgam separator system within ninety days of installation to its local publicly owned water treatment facility, where applicable, and to the New Mexico board of dental health care. A dental office shall report its compliance and maintain records of the operation, maintenance and recycling or disposal of amalgam waste for every consecutive three-year period following the installation of its amalgam separator system and shall

report the information upon request for cause to the New Mexico board of dental health care. The New Mexico board of dental health care shall retain the reported information for review coincident with the board's licensing and renewal functions.

History: Laws 2013, ch. 206, § 5.

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

61-5C-6. Enforcement.

The New Mexico board of dental health care shall initiate disciplinary proceedings for willful and persistent noncompliance with the provisions of the Dental Amalgam Waste Reduction Act.

History: Laws 2013, ch. 206, § 6.

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

ARTICLE 6

Medicine and Surgery

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| <p>Sec.</p> <p>61-6-1. Short title; purpose.</p> <p>61-6-2. New Mexico medical board; appointment; terms; qualifications.</p> <p>61-6-3. Meetings of the board; quorum.</p> <p>61-6-4. Election; duties of officers; reimbursement of board members.</p> <p>61-6-5. Duties and powers.</p> <p>61-6-6. Definitions.</p> <p>61-6-7. Repealed.</p> <p>61-6-7.1. Recompiled.</p> <p>61-6-7.2. Recompiled.</p> <p>61-6-7.3. Recompiled.</p> <p>61-6-7.4. Recompiled.</p> <p>61-6-8 to 61-6-8.1. Repealed.</p> <p>61-6-9. Recompiled.</p> <p>61-6-10. Recompiled.</p> <p>61-6-10.1. Recompiled.</p> <p>61-6-10.2. Recompiled.</p> <p>61-6-10.3. Recompiled.</p> <p>61-6-10.4. Recompiled.</p> <p>61-6-10.5. Recompiled.</p> <p>61-6-10.6. Recompiled.</p> <p>61-6-10.7. Recompiled.</p> <p>61-6-10.8. Repealed.</p> <p>61-6-10.9. Recompiled.</p> <p>61-6-10.10. Recompiled.</p> <p>61-6-10.11. Recompiled.</p> <p>61-6-11. Physician licensure.</p> <p>61-6-11.1. Telemedicine license.</p> <p>61-6-12. Criminal offender's character evaluation.</p> <p>61-6-13. Physician licensure by endorsement.</p> <p>61-6-14. Organized youth camp or school temporary licenses and temporary licenses for out-of-state physicians.</p> <p>61-6-15. License may be refused, revoked or suspended; licensee may be fined, censured or reprimanded; procedure; practice after suspension or revocation; penalty; unprofessional and dishonorable conduct defined; fees and expenses.</p> | <p>Sec.</p> <p>61-6-15.1. Summary suspension or restriction of license.</p> <p>61-6-16. Reporting of settlements and judgments, professional review actions and acceptance of surrendered license; immunity from civil damages; penalty.</p> <p>61-6-17. Exceptions to act.</p> <p>61-6-17.1. Temporary licensure exemption; out-of-state physicians; out-of-state sports teams.</p> <p>61-6-18. Medical students; interns; residents; fellows.</p> <p>61-6-18.1. Public service license.</p> <p>61-6-19. Fees.</p> <p>61-6-20. Practicing without license; penalty.</p> <p>61-6-21. Continuing medical education; penalty.</p> <p>61-6-22. Injunction to prevent practice without a license.</p> <p>61-6-23. Investigation; subpoena.</p> <p>61-6-24. Limitations on actions.</p> <p>61-6-25. False statement; penalty.</p> <p>61-6-26. Triennial renewal fees; penalty for failure to renew license.</p> <p>61-6-27. Issuance and display of renewal certificate.</p> <p>61-6-28. Licensed physicians; changing location.</p> <p>61-6-29. Repealed.</p> <p>61-6-30. Restoration of good standing; fees and other requirements.</p> <p>61-6-31. Disposition of funds; New Mexico medical board fund created; method of payments.</p> <p>61-6-31.1. Board of medical examiners [New Mexico medical board] fund; authorized use.</p> <p>61-6-32. Termination of suspension of license for mental illness; restoration; terms and conditions.</p> <p>61-6-33. Licensure status.</p> <p>61-6-34. Protected actions; communication.</p> <p>61-6-35. Repealed.</p> |
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61-6-1. Short title; purpose.

- A. Chapter 61, Article 6 NMSA 1978 may be cited as the "Medical Practice Act".

B. In the interest of the public health, safety and welfare and to protect the public from the improper, unprofessional, incompetent and unlawful practice of medicine, it is necessary to provide laws and rules controlling the granting and use of the privilege to practice medicine and to establish a medical board to implement and enforce the laws and rules.

C. The primary duties and obligations of the medical board are to issue licenses to qualified health care practitioners, including physicians, physician assistants and anesthesiologist assistants, to discipline incompetent or unprofessional physicians, physician assistants or anesthesiologist assistants and to aid in the rehabilitation of impaired physicians, physician assistants and anesthesiologist assistants for the purpose of protecting the public.

History: 1978 Comp., § 61-6-1, enacted by Laws 1989, ch. 269, § 1; 2003, ch. 19, § 1; 2021, ch. 54, § 16.

Recompilations. — Laws 1989, ch. 269, § 2 recompiled former 61-6-1 NMSA 1978, relating to appointment, qualifications and terms of board of medical examiners, as 61-6-2 NMSA 1978, effective July 1, 1989.

Cross references. — For Sexual Assault Survivors Emergency Care Act, see 24-10D-1 NMSA 1978 et seq.

The 2021 amendment, effective June 18, 2021, in Subsection C, after "qualified", added "health care practitioners, including".

The 2003 amendment, effective June 20, 2003, substituted "medical board" for "board of medical examiners" in Subsections B and C; in Subsection C, inserted "anesthesiologist assistants" three times and deleted "to register qualified" preceding "physician assistants".

ANNOTATIONS

License requirement does not violate first amendment rights. — The Medical Practice Act does not purport to regulate the expression of ideas or opinions concerning effective treatments or other issues of public concern, nor does it require all speakers at seminars held in New Mexico to be licensed to practice in New Mexico. The act simply

requires those who engage in conduct in New Mexico that amounts to the practice of medicine to obtain a New Mexico license. Thus, any burden on the exercise of first amendment rights is at best minimal and incidental, and the act leaves open alternative channels of communication through which ideas and opinions can be expressed. *State v. Ongley*, 1994-NMCA-073, 118 N.M. 431, 882 P.2d 22.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to sale of practice, 62 A.L.R.3d 918.

Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to partnership agreement, 62 A.L.R.3d 970.

Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to employment agreement, 62 A.L.R.3d 1014.

Liability for interference with physician-patient relationship, 87 A.L.R.4th 845.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance, 13 A.L.R.5th 1.

Construction and application of learned-intermediary doctrine, 57 A.L.R.5th 1.

61-6-2. New Mexico medical board; appointment; terms; qualifications.

A. There is created the "New Mexico medical board", consisting of eleven members. The board shall be composed of two public members, one physician assistant and eight reputable physicians, at least two of whom shall be osteopathic physicians and at least two of whom shall be medical physicians. The osteopathic physicians and the medical physicians shall be of known ability, shall be graduates of medical colleges or schools in good standing and shall have been licensed physicians in and bona fide residents of New Mexico for a period of five years immediately preceding the date of their appointment. The physician assistant shall have been a licensed physician assistant and a resident of New Mexico for at least five years immediately preceding the date of appointment. Public members of the board shall be residents of New Mexico, shall not have been licensed by the board as a health care practitioner over which the board has licensure authority and shall have no significant financial interest, direct or indirect, in the occupation regulated.

B. The governor shall appoint the medical physician members from a list of names submitted to the governor by the New Mexico medical society or its authorized governing body or council. The list shall contain five names of qualified medical physicians for each medical physician member to be appointed. Medical physician member vacancies shall be filled in the same manner.

C. The governor shall appoint osteopathic physician members from a list of names submitted to the governor by the New Mexico osteopathic medical association or its authorized governing body or council. The list shall contain five names of qualified osteopathic physicians for each osteopathic physician member to be appointed. Osteopathic physician member vacancies shall be filled in the same manner.

D. The governor shall appoint the physician assistant member from a list of names submitted to the governor by the New Mexico academy of physician assistants or its authorized governing body or council. The list shall contain five names of qualified physician assistants.

E. Members shall be appointed to four-year terms, staggered so that not more than three terms expire in a year. All board members shall hold office until their successors are appointed.

F. A board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board unless excused from attendance by the board for good cause shown.

History: Laws 1923, ch. 44, § 1; C.S. 1929, § 110-101; 1941 Comp., § 51-501; Laws 1949, ch. 139, § 1; 1953 Comp., § 67-5-1; Laws 1955, ch. 44 [§ 1]; 1969, ch. 46, § 1; 1979, ch. 40, § 1; 1978 Comp., § 61-6-1, recompiled as § 61-6-2 by Laws 1989, ch. 269, § 2; 1991, ch. 189, § 9; 2003, ch. 19, § 2; 2021, ch. 54, § 17.

Compiler's notes. — Laws 1989, ch. 269, § 32 repealed former 61-6-2 NMSA 1978, as amended by Laws 1955, ch. 44, § 1, relating to meetings and quorums of the board, effective July 1, 1989. For present comparable provisions, see 61-6-3 NMSA 1978.

Cross references. — For Uniform Licensing Act, see 61-1-1 NMSA 1978 et seq.

The 2021 amendment, effective June 18, 2021, increased the number of members of the New Mexico medical board from nine members to eleven members, increased the number of physicians to be appointed to the board, required that at least two of the members be osteopathic physicians and two of the members be medical physicians, and prohibited health care practitioners over which the board has licensure authority from being public members of the board; in Subsection A, after "consisting of", changed "nine" to "eleven", after "physician assistant and", changed "six" to "eight", after "reputable physicians", added "at least two of whom shall be osteopathic physicians and at least two of whom shall be medical physicians. The osteopathic physicians and the medical physicians shall be"; and after "shall not have been licensed by the board", deleted "or have practiced as a physician" and added "as a health care provider over which the board has licensure authority"; and added a new Subsection C and redesignated former Subsections C through E as Subsections D through F, respectively.

Temporary provisions. — Laws 2021, ch. 54, § 48 provided:

A. On June 18, 2021, all functions, personnel, money, appropriations, records, furniture, equipment, supplies and other property of the board of osteopathic medicine are transferred to the New Mexico medical board.

B. On June 18, 2021, all contractual obligations of the board of osteopathic medicine are binding on the New Mexico medical board.

C. On June 18, 2021, all references in law to the board of osteopathic medicine shall be deemed to be references to the New Mexico medical board.

The 2003 amendment, effective June 20, 2003, substituted "New Mexico medical board" for "Board of medical examiners" in the section heading; in Subsection A, substituted "New Mexico medical board, consisting of nine members" for "board of medical examiners, consisting of eight members" in the first sentence, inserted "one physician assistant" preceding "and six reputable", deleted "as defined in Section 61-6-6 NMSA 1978" in the second sentence, inserted the present third sentence, and inserted "by the board" in the last sentence; added present Subsection C and redesignated former Subsections C and D as Subsections D and E, and rewrote present Subsection D.

Temporary provisions. — Laws 2003, ch. 19, § 28, effective June 20, 2003, provided that all functions, personnel, appropriations, money, records, equipment, supplies and other property of the New Mexico board of medical examiners shall be transferred to the New Mexico medical board; all contracts of the New Mexico board of medical examiners shall be binding and effective on the New Mexico medical board; and all references in law to the New

Mexico board of medical examiners shall be deemed to be references to the New Mexico medical board.

The 1991 amendment, effective June 14, 1991, in Subsection A, increased the membership of the board from six members to eight members and, in the second sentence, substituted "two public members and six reputable physicians" for "one public member and five reputable physicians" and "licensed physicians" for "registered practitioners"; deleted former Subsection C which read "Two of the physician members of the board first appointed shall hold their offices for a period of two years, and the remaining three physician members shall hold their offices for a period of four years. Thereafter, the physician members shall hold their offices for a period of four years. All board members shall hold office until their successors are appointed and qualified"; designated former Subsections D and E as Subsections C and D, rewriting present Subsection C which read "The public member shall be appointed to a four-year term"; and made related and minor stylistic changes in Subsections A and B.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-1 NMSA 1978; inserted "or schools" near the middle of the second sentence of Subsection A; substituted the present provisions of Subsection D for "The public member, upon the effective date of this act, shall be appointed to a term expiring January 1, 1982. Thereafter the public member shall be appointed to a four-year term"; substituted all of the present language of Subsection E following "removed" for "as a member of this board"; and made minor stylistic changes throughout the section.

ANNOTATIONS

Governor's power not usurped. — Requirement that the governor appoint to the board of medical examiner's nominees who were submitted by the New Mexico medical society, where only the governor has this prerogative, would not unconstitutionally usurp the governor's power. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Review of board's proceedings. — On review of proceedings of board of medical examiners, court is limited to a determination of whether the board's order was reasonable, lawful and had substantial evidence to support it. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Corporation to perform medical services. — Because the legislature chose to expressly prohibit the corporate practice, apart from professional corporations, in the case of dentists and podiatrists, and chose to expressly permit, with limitation, other forms of corporate practice in the case of psychologists and engineers, it may be inferred from the legislature's silence in the case of medical doctors that a corporation may be formed to provide medical services. 1987 Op. Att'y Gen. No. 87-39.

A corporation, organized and controlled by non-physicians, may provide medical services to the general public through employed physicians, unless prohibited by statute or unless it exercises lay control of medical judgment or engages in lay exploitation of the medical profession in a manner prohibited by public policy. 1987 Op. Att'y Gen. No. 87-39.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 131, 135.

Optometry as within statute relating to practice of medicine, 22 A.L.R. 1173.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 54 A.L.R. 600.

Liability to patient for results of medical or surgical treatment by one not licensed as required by law, 57 A.L.R. 978.

Practice of medicine or surgery, interstate commerce clause as affecting requirement of license, 82 A.L.R. 1388.

Right of corporation or individual, not himself licensed, to practice medicine or surgery through licensed employees, 103 A.L.R. 1240.

Newspapers, magazines or radio, practice of medicine through, 114 A.L.R. 1506.

Dentist as a physician or surgeon within statutes, 115 A.L.R. 261.

Treatment by electricity as practice of medicine or surgery within statute, 115 A.L.R. 957.

Medical practice acts, health service plan as violation of, 119 A.L.R. 1290.

Prescriptions, one who fills under reciprocal arrangement with physician, as subject to charge of practice of medicine without license, 121 A.L.R. 1455.

Application to masseurs of statutes governing practice of medicine, 17 A.L.R.2d 1183.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice medicine from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

Malpractice in diagnosis and treatment of brain injuries, diseases or conditions, 29 A.L.R.2d 501.

Liability for injury by X-ray, 41 A.L.R.2d 329.

Illegal practice of medicine under statute, ordinance or other measure involving chemical treatment of public water supply, 43 A.L.R.2d 453.

Malpractice: duty and liability of anesthetist, 53 A.L.R.2d 142, 49 A.L.R.4th 63.

Malpractice: treatment of fractures or dislocations, 54 A.L.R.2d 200.

Liability of physician for extending operation or treatment beyond that expressly authorized, 56 A.L.R.2d 695.

Liability of physician for lack of diligence in attending patient, 57 A.L.R.2d 379.

Liability of physician who abandons case, 57 A.L.R.2d 432.

Malpractice in nose and throat treatment, 58 A.L.R.2d 216.

Malpractice in administering medicine to which patient is unusually susceptible or allergic, 64 A.L.R.2d 1281.

Malpractice in treatment of tuberculosis, 75 A.L.R.2d 814.

Malpractice in treatment of the ear, 76 A.L.R.2d 783.

Physician's or surgeon's malpractice in connection with care and treatment of hemophiliac or diagnosis of hemophilia, 1 A.L.R.3d 1107.

Practice by attorneys and physicians as corporate entities or associations under professional service corporation statutes, 4 A.L.R.3d 383.

Physician's or surgeon's malpractice in connection with diagnosis or treatment of rectal or anal disease, 5 A.L.R.3d 916.

Malpractice in connection with intravenous or other forced or involuntary feeding of patient, 6 A.L.R.3d 668.

Validity and construction of contract exempting hospital or doctor from liability for negligence to patient, 6 A.L.R.3d 704.

Liability of physician, surgeon, anesthetist or dentist for injury resulting from foreign object left in patient, 10 A.L.R.3d 9.

Liability of operating surgeon for negligence of nurse assisting him, 12 A.L.R.3d 1017.

Liability in connection with insertion of prosthetic or other corrective devices in patient's body, 14 A.L.R.3d 967.

Liability of physician or hospital where patient suffers heart attack or the like while undergoing unrelated medical procedure, 17 A.L.R.3d 796.

Malpractice in diagnosis and treatment of diseases or conditions of the heart or vascular system, 19 A.L.R.3d 825.

Doctor's liability for mistakenly administering drug, 23 A.L.R.3d 1334.

Medical malpractice, and measure and element of damages, in connection with sterilization or birth control procedures, 27 A.L.R.3d 906.

Malpractice in diagnosis and treatment of tetanus, 28 A.L.R.3d 1364.

Malpractice in connection with diagnosis and treatment of epilepsy, 30 A.L.R.3d 988.

Physician's failure to advise patient to consult specialist or one qualified in a method of treatment which physician is not qualified to give, 35 A.L.R.3d 349.

Attending physician's liability for injury caused by equipment furnished by hospital, 35 A.L.R.3d 1068.

Liability of physician or dentist for injury to patient from physical condition of office premises, 36 A.L.R.3d 1341.

Liability for negligence in diagnosing or treating asprin poisoning, 36 A.L.R.3d 1358.

Surgeon's liability for inadvertently injuring organ other than that intended to be operated on, 37 A.L.R.3d 464.

Release of one responsible for injury as affecting liability of physician or surgeon for negligent treatment of injury, 39 A.L.R.3d 260.

Recovery against physician on basis of breach of contract to achieve particular result or cure, 43 A.L.R.3d 1221.

Physician's tort liability for unauthorized disclosure of confidential information about patient, 48 A.L.R.4th 668.

Construction and application of "Good Samaritan" statutes, 68 A.L.R.4th 294.

Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner, 72 A.L.R.4th 1148.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21; 73 C.J.S. Public Administrative Law and Procedure § 13.

61-6-3. Meetings of the board; quorum.

A. The board shall hold four regular meetings every fiscal year.

B. During the second quarter of each year, the board shall hold its annual meeting and shall elect officers.

C. In addition to the regular meetings, the board may hold special meetings at the call of the president after written notice to all members of the board or at the written or electronic request of any two members.

D. A majority of the members of the board shall constitute a quorum and shall be capable of conducting any board business. The vote of a majority of a quorum shall prevail, even though the vote may not represent an actual majority of all the board members.

History: 1978 Comp., § 61-6-3, enacted by Laws 1989, ch. 269, § 3; 2003, ch. 19, § 3; 2021, ch. 54, § 18.

Repeals and reenactments. — Laws 1989, ch. 269, § 3 repealed former 61-6-3 NMSA 1978, as amended by Laws 1979, ch. 63, § 1, relating to bond of secretary-treasurer, reimbursement of board members and duties of officers, and enacted a new section, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, in Subsection B, after "annual meeting", deleted "during which it" and added "and".

The 2003 amendment, effective June 20, 2003, deleted "Two of those meetings shall be licensing meetings" from end of Subsection A; deleted former Subsection C relating to regular licensing meetings and redesignated former Subsections D and E as Subsections C and D; inserted "or electronic" following "at the written" in present Subsection C.

ANNOTATIONS

Implied powers of board. — Although the statutes are silent in respect to the powers of the board to contract generally, the board possesses the implied authority necessary to fulfill the duties for which the board was created. Among the implied powers of the board would be the authority to maintain office equipment, files and records incident to the carrying out of the board's statutory functions. 1961-62 Op. Att'y Gen. No. 62-87.

Board of medical examiners may negotiate lease of office space for board use; however, such lease may not, in the absence of specific statutory authority, lawfully be entered into for a time period in excess of that for which the legislature has made an appropriation for the payment of such expenses. 1961-62 Op. Att'y Gen. No. 62-87.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

61-6-4. Election; duties of officers; reimbursement of board members.

- A. At its annual meeting, the board shall elect a chair, a vice chair and a secretary-treasurer.
- B. The chair shall preside over the meetings and affairs of the board.
- C. The vice chair shall perform such duties as may be assigned by the chair and shall serve as chair due to the absence or incompetence of the chair.
- D. The secretary-treasurer shall be a physician member of the board and shall:
 - (1) review applications for licensure and interview applicants to determine eligibility for licensure;
 - (2) issue temporary licenses pursuant to Section 61-6-14 NMSA 1978;
 - (3) serve on committees related to board activities that require physician participation;
 - (4) serve as a consultant on medical practice issues when a board action is not required; and
 - (5) perform any other functions assigned by the board or by the chair.
- E. The secretary-treasurer may be compensated at the discretion of the board.
- F. Board members shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance, except that the secretary-treasurer may be additionally compensated as provided in Subsection E of this section and board members may be additionally compensated in accordance with Subsection G of this section.
- G. Board members or agents performing interviews of applicants may be compensated at the board's discretion.

History: 1978 Comp., § 61-6-4, enacted by Laws 1989, ch. 269, § 4; 2003, ch. 19, § 4; 2021, ch. 54, § 19.

Recompilations. — Laws 1989, ch. 269, § 6 recompiled former 61-6-4 NMSA 1978, relating to definitions, as 61-6-6 NMSA 1978, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, required that the secretary-treasurer of the New Mexico medical board be a physician member of the board; and in Subsection D, after "shall", added "be a physician member of the board and shall".

The 2003 amendment, effective June 20, 2003, substituted "chair" for "president" throughout Subsections A to C; deleted former Paragraphs (1) to (4) of Subsection D relating to the duties of the secretary-treasurer and added present Paragraphs (1) to (4) of Subsection D; substituted "chair" for "president between meetings" at the end of Paragraph (5) of Subsection D; in Subsection G, inserted "or agents" near the beginning, and deleted "as required by Sections 61-6-11 and 61-6-13 NMSA 1978" following "of applicants".

61-6-5. Duties and powers.

The board shall:

A. enforce and administer the provisions of the Medical Practice Act, the Physician Assistant Act [Chapter 61, Article 6C NMSA 1978], the Anesthesiologist Assistants Act [Chapter 61, Article 6D NMSA 1978], the Genetic Counseling Act [61-6A-1 to 61-6A-10 NMSA 1978], the Impaired Health Care Provider Act [Chapter 61, Article 7 NMSA 1978], the Polysomnography Practice Act [61-6B-1 to 61-6B-10 NMSA 1978], the Naturopathic Doctors' Practice Act [61-12G-1 through 61-12G-13 NMSA 1978] and the Naprapathic Practice Act [61-12F-1 to 61-12F-11 NMSA 1978];

B. promulgate, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules for the implementation and enforcement of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Impaired Health Care Provider Act, the Polysomnography Practice Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board, as appropriate;

E. take testimony on matters within the board's jurisdiction;

F. keep an accurate record of all its meetings, receipts and disbursements;

G. maintain records in which the name, address and license number of all licensees shall be recorded, together with a record of all license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines;

H. discipline licensees or deny, review, suspend and revoke licenses to practice medicine and censure, reprimand, fine and place on probation and stipulation licensees and applicants in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for any cause stated in the law that the board is charged with enforcing;

I. hire staff and administrators as necessary to carry out the provisions of the Medical Practice Act;

J. have the authority to hire or contract with investigators to investigate possible violations of the Medical Practice Act;

K. have the authority to hire a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to a health care profession or occupation over which the board has authority and to fix the compensation to be paid to such attorney; provided, however, that such attorney shall be compensated from the funds of the board;

L. establish continuing education requirements for licensed practitioners over which the board has authority;

M. establish committees as it deems necessary for carrying on its business;

N. hire or contract with a licensed physician to serve as medical director and fulfill specified duties of the secretary-treasurer;

O. establish and maintain rules related to the management of pain based on review of national standards for pain management; and

P. have the authority to waive licensure fees for the purpose of the recruitment and retention of health care practitioners over which the board has authority.

History: 1953 Comp., § 67-5-3.2, enacted by Laws 1973, ch. 361, § 2; 1989, ch. 269, § 5; 2003, ch. 19, § 5; 2005, ch. 140, § 5; 2008, ch. 53 § 11; 2008, ch. 54, § 11; 2008, ch. 55, § 1; 2011, ch. 31, § 1; 2019, ch. 244, § 15; 2021, ch. 54, § 20; 2022, ch. 39, § 28.

Cross reference. — For provisions of the Pain Relief Act, see 24-2D-1 NMSA 1978 et seq.

The 2022 amendment, effective May 18, 2022, removed a provision requiring the New Mexico medical board to adopt, publish and file rules in accordance with the Uniform Licensing Act, leaving in place a requirement that the board promulgate rules in accordance with the State Rules Act; clarified that the medical board is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; in the section heading, added "Medical board"; in Subsection B, deleted "adopt, publish and file" and added "promulgate", and after "in accordance

with", deleted "the Uniform Licensing Act and"; in Subsection H, deleted "grant" and added "discipline licensees or", deleted "Medical Practice Act, the Implied Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act" and added "law that the board is charged with enforcing"; and in Subsection K, after "the laws in relation to", deleted "the medical" and added "a health care", and after "profession", added "or occupation over which the board has authority".

The 2021 amendment, effective June 18, 2021, made changes to reflect the New Mexico medical board's new regulatory oversight; in Subsection L, after "continuing", deleted "medical", and after "licensed", deleted "physicians and continuing education requirements for physician assistants" and added "practitioners over which the board has authority"; and in Subsection P, after "the purpose of", deleted "medical doctor" and added "the", and

after "retention", added "of health care practitioners over which the board has authority".

Temporary provisions. — Laws 2021, ch. 54, § 48 provided:

A. On June 18, 2021, all functions, personnel, money, appropriations, records, furniture, equipment, supplies and other property of the board of osteopathic medicine are transferred to the New Mexico medical board.

B. On June 18, 2021, all contractual obligations of the board of osteopathic medicine are binding on the New Mexico medical board.

C. On June 18, 2021 of, all references in law to the board of osteopathic medicine shall be deemed to be references to the New Mexico medical board.

The 2019 amendment, effective June 14, 2019, required the New Mexico medical board to enforce and administer the provisions of the Naturopathic Doctors' Practice Act, to adopt rules for the implementation and enforcement of the provisions of the Naturopathic Doctors' Practice Act, and to regulate licenses in accordance with the Naturopathic Doctors' Practice Act; in Subsection A, after "Polysomnography Practice Act," added "the Naturopathic Doctors' Practice Act"; in Subsection B, after "Polysomnography Practice Act," added "the Naturopathic Doctors' Practice Act"; and in Subsection H, after "Impaired Health Care Provider Act," added "the Naturopathic Doctors' Practice Act".

Temporary provisions. — Laws 2019, ch. 244, § 19 provided that by June 30, 2020, the New Mexico medical board shall issue licenses to those applicants who have met the requirements of the Naturopathic Doctors' Practice Act and board rules promulgated in accordance with that act.

The 2011 amendment, effective July 1, 2011, in Subsections A, B and H, required the medical board to

administer and enforce the Naprapathic Practice Act, including licensure and rule making.

The 2008 amendment, effective May 14, 2008, added Subsection P.

The 2005 amendment, effective June 17, 2005, added Subsection O to require the board to establish and maintain rules related to the management of pain based on national standards for paid management.

The 2003 amendment, effective June 20, 2003, substituted "the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act" for "and the Impaired Physician Act" in Subsections A and B; deleted "and regulations" following "all rules" in Subsection B; deleted former Subsections G and H related to keeping records of all persons taking examinations and certified as passing any persons with a passing grade and redesignated Subsections I to O as Subsections G to M; in present Subsection H, substituted "licensees and applicants" for "physicians" following "probation and stipulation", added "and the Impaired Health Care Provider Act" at the end; deleted "including those provided for in Section 61-6-28 NMSA 1978" at the end of present Subsection K; and added Subsection N.

The 1989 amendment, effective July 1, 1989, substituted the present section heading for "Administration of act"; and substituted the present provisions for "The New Mexico board of medical examiners shall enforce and administer the provisions of this act".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 23.

61-6-6. Definitions.

As used in the Medical Practice Act:

A. "approved postgraduate training program for physicians" means a program approved by the accreditation council for graduate medical education, the American osteopathic association or other board-approved program;

B. "board" means the New Mexico medical board;

C. "collaboration" means the process by which a licensed physician and a physician assistant jointly contribute to the health care and medical treatment of patients; provided that:

(1) each collaborator performs actions that the collaborator is licensed or otherwise authorized to perform; and

(2) collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered;

D. "licensed physician" means a medical or osteopathic physician licensed under the Medical Practice Act to practice medicine in New Mexico;

E. "licensee" or "health care practitioner" means a medical physician, osteopathic physician, physician assistant, polysomnographic technologist, anesthesiologist assistant, naturopathic doctor or naprapath licensed by the board to practice in New Mexico;

F. "medical college or school in good standing" for medical physicians means a board-approved medical college or school that has as high a standard as that required by the association of American medical colleges and the council on medical education of the American medical association; and for osteopathic physicians means a college of osteopathic medicine accredited by the commission of osteopathic college accreditation;

G. "medical student" means a student enrolled in a board-approved medical college or school in good standing;

H. "physician assistant" means a health care practitioner who is licensed by the board to practice as a physician assistant and who provides services to patients with the supervision of or in collaboration with a licensed physician as set forth in rules promulgated by the board;

I. "resident" means a graduate of a medical college or school in good standing who is in training in a board-approved and accredited residency training program in a hospital or facility affiliated with an approved hospital and who has been appointed to the position of "resident" or "fellow" for the purpose of postgraduate medical training;

J. "the practice of medicine" consists of:

(1) advertising, holding out to the public or representing in any manner that one is authorized to practice medicine or to practice health care that is under the authority of the board in this state;

(2) offering or undertaking to administer, dispense or prescribe a drug or medicine for the use of another person, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978;

(3) offering or undertaking to give or administer, dispense or prescribe a drug or medicine for the use of another person, except as directed by a licensed physician;

(4) offering or undertaking to perform an operation or procedure upon a person;

(5) offering or undertaking to diagnose, correct or treat in any manner or by any means, methods, devices or instrumentalities any disease, illness, pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of a person;

(6) offering medical peer review, utilization review or diagnostic service of any kind that directly influences patient care, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978; or

(7) acting as the representative or agent of a person in doing any of the things listed in this subsection;

K. "the practice of medicine across state lines" means:

(1) the rendering of a written or otherwise documented medical opinion concerning diagnosis or treatment of a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent; or

(2) the rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent;

L. "sexual contact" means touching the primary genital area, groin, anus, buttocks or breast of a patient or allowing a patient to touch another's primary genital area, groin, anus, buttocks or breast in a manner that is commonly recognized as outside the scope of acceptable medical or health care practice;

M. "sexual penetration" means sexual intercourse, cunnilingus, fellatio or anal intercourse, whether or not there is any emission, or introducing any object into the genital or anal openings of another in a manner that is commonly recognized as outside the scope of acceptable medical or health care practice; and

N. "United States" means the fifty states, its territories and possessions and the District of Columbia.

History: 1953 Comp., § 67-5-3.1, enacted by Laws 1973, ch. 361, § 1; 1982, ch. 110, § 1; 1978 Comp., § 61-6-4, recompiled as § 61-6-6 by Laws 1989, ch. 269, § 6; 1991, ch. 148, § 1; 1994, ch. 80, § 1; 1997, ch. 187, § 1; 2001, ch. 96, § 1; 2003, ch. 19, § 6; 2008, ch. 54, § 12; 2011, ch. 31, § 2; 2017, ch. 103, § 1; 2019, ch. 244, § 16; 2021, ch. 54, § 21.

Recompilations. — Laws 1989, ch. 9, § 1 recompiled former 61-6-6 NMSA 1978, relating to certification as physician's assistant, as 61-6-7 NMSA 1978, effective March 4, 1989.

Cross references. — For provision for telemedicine license, see 61-6-11.1 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the definitions of terms to include osteopathic and medical physicians and osteopathic physician assistants in the Medical Practice Act; in Subsection A, after "training program", added "for physicians", and after "graduate medical education", added "the American osteopathic association or other board-approved program"; in Subsection D,

after "medical", deleted "doctor" and added "or osteopathic physician"; in Subsection E, after "licensee", added "or health care practitioner"; and after "medical", deleted "doctor" and added "physician, osteopathic physician"; in Subsection F, after "standing", added "for medical physicians", and after "American medical association", added "and for osteopathic physicians means a college of osteopathic medicine accredited by the commission of osteopathic college accreditation"; in Subsection H, after "means a health", deleted "professional" and added "care practitioner"; deleted Subsection I, which defined "intern", and redesignated former Subsections J through O as Subsections I through N, respectively; in Subsection J(1), after "authorized to practice medicine", added "or to practice health care that is under the authority of the board"; in Subsection L, after "acceptable medical", added "or health care"; and in Subsection M, after "scope of acceptable medical", added "or health care".

The 2019 amendment, effective June 14, 2019, included "naturopathic doctor" in the definition of "licensee";

in the introductory clause, after "As used in", deleted "Chapter 61, Article 6 NMSA 1978" and added "the Medical Practice Act"; and in Subsection E, after "anesthesiologist assistant," added "naturopathic doctor".

The 2017 amendment, effective June 16, 2017, defined "collaboration" as used in this article to provide for collaboration between a physician assistant and a licensed physician, and made technical changes; in Subsection A, after "approved by the", deleted "accrediting" and added "accreditation", after "council", deleted "on" and added "for", and after "education", deleted "of the American medical association or by the board"; added a new Subsection C and redesignated the succeeding subsections accordingly; and in Subsection H, after "services to patients", deleted "under" and added "with", after "supervision", deleted "and direction", after "of", added "or in collaboration with", and after "licensed physician", added "as set forth in rules promulgated by the board".

The 2011 amendment, effective July 1, 2011, in Subsection D, defined a "licensee" to include a licensed naprapath.

The 2008 amendment, effective July 1, 2008, added "polysomnography technologist" in Subsection D.

The 2003 amendment, effective June 20, 2003, deleted former Subsections A defining "acting in good faith" and F defining "person"; added present Subsections A and D and redesignated subsections accordingly; substituted "medical board" for "board of medical examiners" in Subsection B; rewrote Subsection G; deleted "postgraduate year one or" at the beginning of Subsection H; in Subsection I, deleted "postgraduate year two through eight or" at the beginning, substituted "assistant resident" for "fellow" near the end; in Paragraph J(7), deleted "Paragraphs (1) through (6) of" following "things listed in".

The 2001 amendment, effective April 2, 2001, added Subsection K, and renumbered the remaining subsections accordingly.

The 1997 amendment, effective July 1, 1997, substituted "licensed" for "registered" in Subsection G; and deleted "approved by the board" following "standing" in Subsections H and I.

The 1994 amendment, effective May 18, 1994, substituted "eight" for "five" in Subsection I; added "administer, dispense or" and added language and punctuation

beginning with ", except" and ending with "1978" in Subsection J(2); substituted "administer, dispense or prescribe any drug" for "administer any dangerous drug" in Subsection J(3); deleted "or" following the semicolon in Subsection J(5); added Subsection J(6); substituted "(6)" for "(5)" in former Subsection J(6) and renumbered it as Subsection J(7); deleted "and" following the semicolon in Subsection K; added "; and" at the end of Subsection L; and added Subsection M.

The 1991 amendment, effective June 14, 1991, substituted "or treat" for "and treat" near the beginning of Paragraph (5) in Subsection J; added Subsections K and L; and made related and other stylistic changes in Subsections D and I.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-4 NMSA 1978; added present Subsection A; redesignated former Subsections A and B as present Subsections B and C; in present Subsection C, substituted "medical doctor licensed under the Medical Practice Act" for "physician licensed"; added Subsections D, E and F; redesignated former Subsection C as present Subsection G while substituting therein "physician assistant" for "physician's assistant" and "registered" for "certified"; and added Subsections H through J.

ANNOTATIONS

License requirement does not violate first amendment rights. — The Medical Practice Act does not purport to regulate the expression of ideas or opinions concerning effective treatments or other issues of public concern, nor does it require all speakers at seminars held in New Mexico to be licensed to practice in New Mexico. The act simply requires those who engage in conduct in New Mexico that amounts to the practice of medicine to obtain a New Mexico license. Thus, any burden on the exercise of first amendment rights is at best minimal and incidental, and the act leaves open alternative channels of communication through which ideas and opinions can be expressed. *State v. Ongley*, 1994-NMCA-073, 118 N.M. 431, 882 P.2d 22.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 2, 3, 5.

61-6-7. Repealed.

Repeals. — Laws 2022, ch. 39, § 106 repealed 61-6-7 NMSA 1978, as enacted by Laws 1973, ch. 361, § 3, relating to short title, licensure as a physician assistant, scope

of practice, biennial registration of supervision, license renewal, fees, effective May 18, 2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-6-7.1. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 30 recompiled and amended former 61-6-7.1 NMSA 1978 as 61-6C-2 NMSA 1978, effective May 18, 2022.

61-6-7.2. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 32 recompiled and amended former 61-6-7.2 NMSA 1978 as 61-6C-4 NMSA 1978, effective May 18, 2022.

61-6-7.3. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-7.3 NMSA 1978 as 61-6C-5 NMSA 1978, effective May 18, 2022.

61-6-7.4. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-7.4 NMSA 1978 as 61-6C-6 NMSA 1978, effective May 18, 2022.

61-6-8 to 61-6-8.1. Repealed.

Repeals. — Laws 2003, ch. 19, § 29 repealed 61-6-8 and 61-6-8.1 NMSA 1978, as enacted by Laws 1973, ch. 361, § 4 and Laws 1997, ch. 187, § 6, respectively, relating to the power to deny, revoke or suspend any license to practice

as a physician assistant and the physician assistant advisory committee. For provisions of former sections, see the 2002 NMSA 1978 on *NMOneSource.com*.

61-6-9. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 33 recompiled and amended former 61-6-9 NMSA 1978 as 61-6C-7 NMSA 1978, effective May 18, 2022.

61-6-10. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 34 recompiled and amended former 61-6-10 NMSA 1978 as 61-6C-8 NMSA 1978, effective May 18, 2022.

61-6-10.1. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 35 recompiled and amended former 61-6-10.1 NMSA 1978 as 61-6D-1 NMSA 1978, effective May 18, 2022.

61-6-10.2. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.2 NMSA 1978 as 61-6D-2 NMSA 1978, effective May 18, 2022.

61-6-10.3. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.3 NMSA 1978 as 61-6D-3 NMSA 1978, effective May 18, 2022.

61-6-10.4. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.4 NMSA 1978 as 61-6D-4 NMSA 1978, effective May 18, 2022.

61-6-10.5. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.5 NMSA 1978 as 61-6D-5 NMSA 1978, effective May 18, 2022.

61-6-10.6. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.6 NMSA 1978 as 61-6D-6 NMSA 1978, effective May 18, 2022.

61-6-10.7. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.7 NMSA 1978 as 61-6D-7 NMSA 1978, effective May 18, 2022.

61-6-10.8. Repealed.

Repeals. — Laws 2003, ch. 19, § 29 repealed 61-6-10.8 NMSA 1978, as enacted by Laws 2001, ch. 311, § 8, relating to the power to deny, revoke or suspend a license

to practice as an anesthesiologist assistant, effective June 20, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

61-6-10.9. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 36 recompiled and amended former 61-6-10.9 NMSA 1978 as 61-6D-8 NMSA 1978, effective May 18, 2022.

61-6-10.10. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.10 NMSA 1978 as 61-6D-9 NMSA 1978, effective May 18, 2022.

61-6-10.11. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.11 NMSA 1978 as 61-6D-10 NMSA 1978, effective May 18, 2022.

61-6-11. Physician licensure.

A. The board may consider for licensure a person who is of good moral character, is a graduate of an accredited United States or Canadian medical or osteopathic medical school, has passed an examination approved by the board and has completed two years of an approved postgraduate training program for physicians.

B. An applicant who has not completed two years of an approved postgraduate training program for physicians, but who otherwise meets all other licensing requirements, may present evidence to the board of the applicant's other professional experience for consideration by the board in lieu of the approved postgraduate training program. The board shall, in its sole discretion, determine if the professional experience is substantially equivalent to the required approved postgraduate training program for physicians.

C. A graduate of a board-approved medical or osteopathic medical school located outside the United States or Canada may be granted a license to practice medicine in New Mexico, provided the applicant presents evidence to the board that the applicant is a person of good moral character and provided that the applicant presents satisfactory evidence to the board that the applicant has successfully passed an examination as required by the board and has successfully completed two years of postgraduate medical training in an approved postgraduate training program for physicians. A graduate of a medical school located outside the United States who successfully completes at least two years of an approved postgraduate training program for physicians at or affiliated with an institution located in New Mexico prior to December 30, 2007 and who meets the other requirements of this section may also be granted a license to practice medicine.

D. All applicants for licensure may be required to appear personally before the board or a designated agent for an interview.

E. An applicant for licensure by examination shall not be granted a license if the applicant has taken the examination in two or more steps and has failed to successfully pass the final step within seven years of the date that the first step was passed. An applicant for licensure who holds

a medical or osteopathic doctor degree and a doctoral degree in a medically related field must successfully complete the entire examination series within ten years from the date the first step of the examination is passed. The board may, by rule, establish exceptions to the time requirements of this subsection.

F. Every applicant for licensure under this section shall pay the fees required by Section 61-6-19 NMSA 1978.

G. The board may require fingerprints and other information necessary for a state and national criminal background check.

History: Laws 1923, ch. 44, § 3; C.S. 1929, § 110-104; Laws 1939, ch. 80, § 1; 1941 Comp., § 51-504; 1953 Comp., § 67-5-4; Laws 1959, ch. 189, § 1; 1969, ch. 46, § 3; 1976, ch. 16, § 1; 1983, ch. 260, § 1; 1978 Comp., § 61-6-10, recompiled as § 61-6-11 by Laws 1989, ch. 269, § 7; 1994, ch. 80, § 5; 1997, ch. 221, § 2; 2001, ch. 96, § 2; 2003, ch. 19, § 12; 2005, ch. 159, § 1; 2021, ch. 54, § 27.

Recompilations. — Laws 1989, ch. 269, § 8 recompiled former 61-6-11 NMSA 1978, relating to criminal offender's character evaluation, as 61-6-12 NMSA 1978, effective July 1, 1989.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2021 amendment, effective June 18, 2021, provided that a graduate of an accredited osteopathic medical school, having met other requirements, may be considered for licensure by the New Mexico medical board, clarified acceptable training programs required to be considered for physician licensure, and removed a provision that a candidate for physician licensure must be in compliance with United States immigration laws; after each occurrence of "approved postgraduate training program", added "for physicians" throughout; in the section heading, added "Physician"; in Subsection A, after "Canadian medical", added "or osteopathic medical"; in Subsection C, after "good moral character", deleted "and is in compliance with the United States immigration laws"; and in Subsection E, after "who holds a medical", added "or osteopathic".

The 2005 amendment, effective April 5, 2005, in Subsection A, provided that the board may consider for licensure a person who is a graduate of an accredited United States or Canadian medical school; in Subsection C, provided that a graduate of a medical school located outside the United States who completes two years of postgraduate training at or affiliated with an institution located in New Mexico prior to December 30, 2007 and who is otherwise qualified may be granted a license to practice medicine; and in Subsection E, provided that the board may by rule establish exceptions to the time requirements of Subsection E.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 2001 amendment, effective April 2, 2001, added Subsection H and renumbered the remaining subsection accordingly.

The 1997 amendment, effective June 20, 1997, inserted "of good moral character and is" preceding "a graduate" in Subsection A and inserted "of good moral character and after" preceding "successfully" in Subsection E.

The 1994 amendment, effective May 18, 1994, amended the section heading, which read "Licensure by examination - Admission to examination - Graduates of foreign colleges"; substituted "two years" for "one year" and deleted "approved by the board in accordance with its regulations" following "training" in Subsection

A; added Subsections B and C and redesignated former Subsections B through F as Subsections D through H, respectively; substituted "a board-approved licensing examination" for "the examination as prescribed by the federation of state boards of medical examiners" in Subsection D; in Subsection F, deleted "and its possessions" following "outside the United States," substituted "the applicant" for "he" four times, substituted "is in compliance with the United States immigration laws" for "is a legal resident of the United States," substituted "an examination as required by the board and" for "the examination as required and given by the educational council for foreign medical graduates" and substituted "training in a board-approved program" for "education and also successfully passes the examination as prescribed by the board"; substituted "a" for "any" in Subsection G; and substituted "the fees required by" for "an examination fee and an examination fee as provided in" in Subsection H.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-10 NMSA 1978; added "Licensure by examination" to the catchline and deleted therefrom "medical college in good standing defined" preceding "admission"; in Subsection A, substituted "may admit" for "shall, upon production of evidence satisfactory to it, admit" and "person" for "reputable person who has applied for citizenship in the United States or is a citizen of the United States", inserted "or school", substituted "Subsection D of Section 61-6-6 NMSA 1978" for "this section", and deleted "in a hospital" following "training"; in Subsection B, substituted the present provisions for the former definition of a "medical college in good standing"; added present Subsection C; redesignated former Subsection C as present Subsection D; in present Subsection D, substituted "and is a legal resident" for "and has applied for citizenship in the United States or is a citizen", and inserted "has successfully completed two years of post-graduate medical education"; deleted former Subsection D, relating to license by endorsement and without examination for graduates of foreign medical colleges; added Subsections E and F; and made minor stylistic changes throughout the section.

ANNOTATIONS

Reinstatement after license revocation. — Once a physician's license has been revoked the only method of reinstating the former licensee to full privileges is by means of reapplication. 1953-54 Op. Att'y Gen. No. 53-5839.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 55 to 60.

Tort claim for negligent credentialing of physician, 98 A.L.R.5th 533.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20.

61-6-11.1. Telemedicine license.

A. The board shall issue a licensed physician a telemedicine license to allow the practice of medicine across state lines to an applicant who holds a full and unrestricted license to practice medicine in another state or territory of the United States. The board shall establish by rule the requirements for licensure; provided the requirements shall not be more restrictive than those required for licensure by endorsement.

B. A telemedicine license shall be issued for a period not to exceed three years and may be renewed upon application, payment of fees as provided in Section 61-6-19 NMSA 1978 and compliance with other requirements established by rule of the board.

History: Laws 2001, ch. 96, § 10; 2021, ch. 54, § 28.

Cross references. — For penalty for practicing medicine across state lines without license, see 61-6-20 NMSA 1978.

The 2021 amendment, effective June 18, 2021, clarified that the New Mexico medical board shall issue telemedicine licenses to licensed physicians; and in Subsection A, after "shall issue", added "a licensed physician".

61-6-12. Criminal offender's character evaluation.

The provisions of the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Medical Practice Act and to all health care practitioners over which the board has licensure authority.

History: 1953 Comp., § 67-5-4.1, enacted by Laws 1974, ch. 78, § 15; 1978 Comp., § 61-6-11, recompiled as § 61-6-12 by Laws 1989, ch. 269, § 8; 2021, ch. 54, § 29.

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-12 NMSA 1978, as amended by Laws 1979, ch. 63, § 2, relating to examinations, licenses without examination, and temporary licenses, effective July 1, 1989. For present comparable provisions, see 61-6-13 NMSA 1978.

Cross references. — For criminal records screening for caregivers employed by care providers, see 29-17-2 to 29-17-5 NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided that the provisions of the Criminal Offender Employment Act govern any consideration of criminal records by the New Mexico medical board of health care practitioners over which the board has licensure authority; and after "Medical Practice Act", added "and to all health care practitioners over which the board has licensure authority".

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-11 NMSA 1978, and substituted "the Medical Practice Act" for "Sections 67-5-1 through 67-5-26 NMSA 1953".

61-6-13. Physician licensure by endorsement.

A. The board may grant a license by endorsement to a physician applicant who:

- (1) has graduated from an accredited United States or Canadian medical or osteopathic medical school;
- (2) is board certified in a specialty recognized by the American board of medical specialties, the American osteopathic association or other specialty boards as approved by the board;
- (3) has been a licensed physician in the United States or Canada and has practiced medicine in the United States or Canada immediately preceding the application for at least three years;
- (4) holds an unrestricted license in another state or Canada; and
- (5) was not the subject of a disciplinary action in a state or province.

B. The board may grant a physician license by endorsement to an applicant who:

- (1) has graduated from a medical or osteopathic medical school located outside the United States or Canada;
- (2) is of good moral character;
- (3) is board certified in a specialty recognized by the American board of medical specialties, the American osteopathic association or other boards as approved by the board;
- (4) has been a licensed physician in the United States or Canada and has practiced medicine in the United States or Canada immediately preceding the application for at least three years;
- (5) holds an unrestricted license in another state or Canada; and
- (6) was not the subject of disciplinary action in a state or province.

C. An endorsement provided pursuant to this section shall certify that the applicant has passed an examination that meets with board approval and that the applicant is in good standing in that

jurisdiction. In cases when the applicant is board certified, has not been the subject of disciplinary action that would be reportable to the national practitioner data bank or the healthcare integrity and protection data bank and has unusual skills and experience not generally available in this state, and patients residing in this state have a significant need for such skills and experience, the board may waive a requirement imposing time limits for examination completion that are different from requirements of the state where the applicant is licensed.

D. An applicant for licensure under this section may be required to personally appear before the board or a designated agent for an interview.

E. An applicant for licensure under this section shall pay an application fee as provided in Section 61-6-19 NMSA 1978.

F. The board may require fingerprints and other information necessary for a state and national criminal background check.

History: 1978 Comp., § 61-6-13, enacted by Laws 1989, ch. 269, § 9; 1994, ch. 80, § 6; 2001, ch. 96, § 3; 2003, ch. 19, § 13; 2005, ch. 159, § 2; 2021, ch. 54, § 32; 2021, ch. 70, § 8.

Recompilations. — Laws 1989, ch. 269, § 10 recomplied former 61-6-13 NMSA 1978, relating to organized youth camp or school licenses, as 61-6-14 NMSA 1978, effective July 1, 1989.

Cross references. — For perjury generally, see 30-25-1 NMSA 1978.

2021 Multiple Amendments. — Laws 2021, ch. 54, § 32 and Laws 2021, ch. 70, § 8, both effective June 18, 2021, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2021, ch. 70, § 8 as the last act signed by the governor is set out above and incorporates both amendments. The amendments enacted by Laws 2021, ch. 54, § 32 and Laws 2021, ch. 70, § 8 are described below. To view the session laws in their entirety, see the 2021 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2021, ch. 54, § 32, provided that a graduate of an accredited osteopathic medical school, having met other requirements, may be granted a license by endorsement by the New Mexico medical board, included board certification in a specialty recognized by the American osteopathic association as acceptable for meeting certain licensure requirements, and removed a provision that an applicant for licensure by endorsement must be in compliance with United States immigration laws, and Laws 2021, ch. 70, § 8, removed a provision that an applicant for licensure by endorsement must be in compliance with United States immigration laws.

Laws 2021, ch. 54, § 32, effective June 18, 2021, provided that a graduate of an accredited osteopathic medical school, having met other requirements, may be granted a license by endorsement by the New Mexico medical board, included board certification in a specialty recognized by the American osteopathic association as acceptable for meeting certain licensure requirements, and removed a provision that an applicant for licensure by endorsement must be in compliance with United States immigration laws; in the section heading, added "Physician"; in Subsection A, in the introductory clause, preceding "applicant", added "a physician", in Paragraph A(1), after "Canadian medical", added "or osteopathic medical", and in Paragraph A(2), after "medical specialties", added "the American osteopathic association or other specialty boards as approved by the board"; and in Subsection B, in the introductory clause, after "grant a", added "physician", in Paragraph B(1), after "from a medical", added "or osteopathic medical", deleted former Paragraph B(3) and redesignated former Paragraphs B(4) through B(7) as Paragraphs B(3) through B(6), respectively, and in Paragraph B(3), after

"medical specialties", added "the American osteopathic association or other boards as approved by the board".

Laws 2021, ch. 70, § 8, effective June 18, 2021, removed a provision that an applicant for licensure by endorsement must be in compliance with United States immigration laws; and in Subsection B, deleted Paragraph B(3) and redesignated former Paragraphs B(4) through B(7) as Paragraphs B(3) through B(6), respectively.

The 2005 amendment, effective April 5, 2005, in Subsection A, provided that the board may grant a license by endorsement to an applicant who has graduated from an accredited United States or Canadian medical school and deleted the provision that the officers of the examining board with jurisdiction or the Canadian medical council endorse the applicant; and in Subsection B, deleted the provision that the officers of the examining board with jurisdiction or the Canadian medical council endorse the applicant.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 2001 amendment, effective April 2, 2001, in subsection D, inserted the language beginning "In cases when the applicant is board certified" and ending "where the applicant is licensed."

The 1994 amendment, effective May 18, 1994, rewrote Subsections A, B and C, added Subsection D and redesignated former Subsections D and E as Subsections E and F, respectively, and substituted "any" for "a" in subsection E.

ANNOTATIONS

Findings regarding "equivalent" "qualifications and requirements". — The district court may find that the differences in methodology of examination scoring between this state and another, do not rationally relate to the question of "equivalent" "qualifications and requirements". *Fiber v. N.M. Bd. of Med. Exam'rs*, 1979-NMSC-046, 93 N.M. 67, 596 P.2d 510.

Practice of medicine limited. — The practice of medicine, as characterized by the art of diagnosing, administration and prescribing of drugs and medicines, surgery, psychiatric examination, analysis and consultation, is limited in New Mexico to persons who, as determined by the New Mexico board of medical examiners, are duly accredited graduates of approved medical schools and have successfully passed a written examination or who have been granted their licenses by way of endorsement from the officers of examining boards of other states or certified to the New Mexico board of medical examiners by the national board of medical examiners. 1957-58 Op. Att'y Gen. No. 58-136.

Entitlement to license. — Absent properly issued and reasonable regulations, a person is entitled to a license if all the qualifications established by the legislature are met. 1965 Op. Att'y Gen. No. 65-11.

Function of interview. — The interview is a helpful aid in determining whether or not an applicant has met the New Mexico qualifications for licensing by endorsement. 1965 Op. Att'y Gen. No. 65-11.

Osteopath is a physician and surgeon who has been trained in that "system or school of medicine which is taught and practiced in standard colleges of osteopathy and surgery," substantially the same as those in which applicants for a license to practice medicine are required to be examined. 1933-34 Op. Att'y Gen. No. 34-806.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 67, 68. 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

61-6-14. Organized youth camp or school temporary licenses and temporary licenses for out-of-state physicians.

A. The secretary-treasurer of the board or the board's designee may, either by examination or endorsement, approve a temporary license to practice medicine to an applicant qualified to practice medicine in this state who will be temporarily in attendance at an organized youth camp or school, provided that:

- (1) the practice shall be confined to enrollees, leaders and employees of the camp or school;
- (2) the temporary license shall be issued for a period not to exceed three months from date of issuance; and
- (3) the temporary license may be issued upon written application of the applicant, accompanied by such proof of the qualifications of the applicant as specified by board rule.

B. The secretary-treasurer of the board or the board's designee may approve a temporary license to practice medicine under the supervision of a licensed physician to an applicant who is licensed to practice medicine in another state, territory of the United States or another country and who is qualified to practice medicine in this state. The following provisions shall apply:

(1) the temporary license may be issued upon written application of the applicant, accompanied by proof of qualifications as specified by rule of the board. A temporary license may be granted to allow the applicant to assist in teaching, conducting research, performing specialized diagnostic and treatment procedures, implementing new technology and for physician educational purposes. A licensee may engage in only the activities specified on the temporary license, and the temporary license shall identify the licensed physician who will supervise the applicant during the time the applicant practices medicine in New Mexico. The supervising licensed physician shall submit an affidavit attesting to the qualifications of the applicant and activities the applicant will perform; and

(2) the temporary license shall be issued for a period not to exceed three months from date of issuance and may be renewed upon application and payment of fees as provided in Section 61-6-19 NMSA 1978.

C. The application for a temporary license under this section shall be accompanied by a license fee as provided in Section 61-6-19 NMSA 1978.

History: 1941 Comp., § 51-125; Laws 1953, ch. 48, § 2; 1953 Comp., § 67-5-7; Laws 1969, ch. 46, § 5; 1988, ch. 11, § 1; 1978 Comp., § 61-6-13, recompiled as § 61-6-14 by Laws 1989, ch. 269, § 10; 1991, ch. 148, § 2; 2003, ch. 19, § 14; 2005, ch. 159, § 3; 2021, ch. 54, § 33.

Recompilations. — Laws 1989, ch. 269, § 11 recompiled former 61-6-14 NMSA 1978, relating to refusal, revocation or suspension of license, as 61-6-15 NMSA 1978, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, after each occurrence of "practice medicine," deleted "and surgery".

The 2005 amendment, effective April 5, 2005, in Subsection A, provided that the secretary-treasurer of the board or its designee may by examination or endorsement approve a temporary license to practice medicine and surgery to an applicant temporarily at an organized youth camp or school; and in Subsection B, provided that the secretary-treasurer of the board or its designee may by

examination or endorsement approve a temporary license to practice medicine and surgery under the supervision of a licensed physician to an applicant who is licensed to practice medicine outside New Mexico and who is otherwise qualified to practice medicine.

The 2003 amendment, effective June 20, 2003, substituted "the qualifications of the applicant as specified by board rule" for "his qualifications as the secretary-treasurer of the board, in his discretion, may require" at the end of Paragraph A(2); in Subsection B, substituted "supervision of a licensed physician" for "sponsorship of and in association with a licensed New Mexico physician" following "medicine under the"; rewrote Paragraph B(1); deleted Subsection C concerning interim licenses and redesignated former Subsection D as present Subsection C.

The 1991 amendment, effective June 14, 1991, in Paragraph (1) of Subsection B, added "and for physician educational purposes" at the end of the second sentence

and inserted "licensed" preceding "New Mexico physician" in the third sentence.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-13 NMSA 1978; in Subsection A, deleted "the average temporary daily population of which exceeds one hundred persons, for a period of not less than two weeks nor more than three months" following "school" near the middle of the introductory paragraph; added all of the language of Subsection B(2) following "fees"; added present Subsection C; redesignated former Subsection C as present Subsection D while substituting all of the language thereof following "fee" for "as determined by the board, but not to exceed one hundred dollars (\$100), payable to the board";

and deleted "or permit" following "license" several times throughout the section.

The 1988 amendment, effective February 18, 1988, added "temporary" and "and temporary licenses for out-of-state physicians" to the section heading; deleted "of medical examiners" following "of the board" and "apply for a license to" following "qualified to" near the beginning of Subsection A, and added "and the following provisions shall apply" at the end of the Subsection; redesignated former Subsections B and C as present Subsections A(1) and A(2), substituting "permit may" for "permit shall" in Subsection A(2); deleted former Subsection D, regarding a \$25.00 license fee; and added present Subsection B.

61-6-15. License may be refused, revoked or suspended; licensee may be fined, censured or reprimanded; procedure; practice after suspension or revocation; penalty; unprofessional and dishonorable conduct defined; fees and expenses.

A. The board may refuse to license and may revoke or suspend a license that has been issued by the board or a previous board and may fine, censure or reprimand a licensee upon satisfactory proof being made to the board that the applicant for or holder of the license has been guilty of unprofessional or dishonorable conduct. The board may also refuse to license an applicant who is unable to practice as a physician, practice as a physician assistant, an anesthesiologist assistant, a genetic counselor, a naturopathic practitioner or naprapathic practitioner or practice polysomnography, pursuant to Section 61-7-3 NMSA 1978. All proceedings shall be as required by the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] or the Impaired Health Care Provider Act [Chapter 61, Article 7 NMSA 1978].

B. The board may, in its discretion and for good cause shown, place the licensee on probation on the terms and conditions it deems proper for protection of the public, for the purpose of rehabilitation of the probationer or both. Upon expiration of the term of probation, if a term is set, further proceedings may be abated by the board if the holder of the license furnishes the board with evidence that the licensee is competent to practice, is of good moral character and has complied with the terms of probation.

C. If evidence fails to establish to the satisfaction of the board that the licensee is competent and is of good moral character or if evidence shows that the licensee has not complied with the terms of probation, the board may revoke or suspend the license. If a license to practice in this state is suspended, the holder of the license may not practice during the term of suspension. A person whose license has been revoked or suspended by the board and who thereafter practices or attempts or offers to practice in New Mexico, unless the period of suspension has expired or been modified by the board or the license reinstated, is guilty of a felony and shall be punished as provided in Section 61-6-20 NMSA 1978.

D. "Unprofessional or dishonorable conduct", as used in this section, means, but is not limited to because of enumeration, conduct of a licensee that includes the following:

- (1) procuring, aiding or abetting an illegal procedure;
- (2) employing a person to solicit patients for the licensee;
- (3) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;
- (4) obtaining a fee by fraud or misrepresentation;
- (5) willfully or negligently divulging a professional confidence;
- (6) conviction of an offense punishable by incarceration in a state penitentiary or federal prison or conviction of a misdemeanor associated with the practice of the licensee. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;
- (7) habitual or excessive use of intoxicants or drugs;
- (8) fraud or misrepresentation in applying for or procuring a license to practice in this state or in connection with applying for or procuring renewal, including cheating on or attempting to subvert the licensing examinations;

(9) making false or misleading statements regarding the skill of the licensee or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the licensee or at the direction of the licensee in the treatment of a disease or other condition of the human body or mind;

(10) impersonating another licensee, permitting or allowing a person to use the license of the licensee or practicing as a licensee under a false or assumed name;

(11) aiding or abetting the practice of a person not licensed by the board;

(12) gross negligence in the practice of a licensee;

(13) manifest incapacity or incompetence to practice as a licensee;

(14) discipline imposed on a licensee by another licensing jurisdiction, including denial, probation, suspension or revocation, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of disciplinary action or sanction taken by another jurisdiction is conclusive evidence of the action;

(15) the use of a false, fraudulent or deceptive statement in a document connected with the practice of a licensee;

(16) fee splitting;

(17) the prescribing, administering or dispensing of narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes;

(18) conduct likely to deceive, defraud or harm the public;

(19) repeated similar negligent acts or a pattern of conduct otherwise described in this section or in violation of a board rule;

(20) employing abusive billing practices;

(21) failure to report to the board any adverse action taken against the licensee by:

(a) another licensing jurisdiction;

(b) a peer review body;

(c) a health care entity;

(d) a professional or medical society or association;

(e) a governmental agency;

(f) a law enforcement agency; or

(g) a court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(22) failure to report to the board the denial of licensure, surrender of a license or other authorization to practice in another state or jurisdiction or surrender of membership on any medical staff or in any medical or professional association or society following, in lieu of and while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(23) failure to furnish the board, its investigators or representatives with information requested by the board;

(24) abandonment of patients;

(25) being found mentally incompetent or insane by a court of competent jurisdiction;

(26) injudicious prescribing, administering or dispensing of a drug or medicine;

(27) failure to adequately supervise, as provided by board rule, a medical or surgical assistant or technician or professional licensee who renders health care;

(28) sexual contact with a patient or person who has authority to make medical decisions for a patient, other than the spouse of the licensee;

(29) conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public;

(30) the surrender of a license or withdrawal of an application for a license before another state licensing board while an investigation or disciplinary action is pending before that board for acts or conduct similar to acts or conduct that would constitute grounds for action pursuant to this section;

(31) sexual contact with a former mental health patient of the licensee, other than the spouse of the licensee, within one year from the end of treatment;

(32) sexual contact with a patient when the licensee uses or exploits treatment, knowledge, emotions or influence derived from the current or previous professional relationship;

- (33) improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records;
- (34) failure to provide pertinent and necessary medical records to a physician or patient of the physician in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient;
- (35) undertreatment of pain as provided by board rule;
- (36) interaction with physicians, hospital personnel, patients, family members or others that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;
- (37) soliciting or receiving compensation by a physician assistant or anesthesiologist assistant from a person who is not an employer of the assistant;
- (38) willfully or negligently divulging privileged information or a professional secret; or
- (39) the use of conversion therapy on a minor.

E. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

- (a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or
- (b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "fee splitting" includes offering, delivering, receiving or accepting any unearned rebate, refunds, commission preference, patronage dividend, discount or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients or customers to a person, irrespective of any membership, proprietary interest or co-ownership in or with a person to whom the patients, clients or customers are referred;

(3) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(4) "minor" means a person under eighteen years of age; and

(5) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

F. Licensees whose licenses are in a probationary status shall pay reasonable expenses for maintaining probationary status, including laboratory costs when laboratory testing of biological fluids are included as a condition of probation.

History: 1953 Comp., § 67-5-9; Laws 1969, ch. 46, § 6; 1979, ch. 63, § 3; 1983, ch. 260, § 2; 1978 Comp., § 61-6-14, recompiled as § 61-6-15 by Laws 1989, ch. 269, § 11; 1991, ch. 148, § 3; 1994, ch. 80, § 7; 1997, ch. 221, § 1; 2001, ch. 96, § 4; 2003, ch. 19, § 15; 2005, ch. 159, § 4; 2008, ch. 53, § 12; 2008, ch. 54, § 13; 2017, ch. 132, § 3; 2021, ch. 54, § 34.

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-15 NMSA 1978, as amended by Laws 1973, ch. 361, § 7, relating to definition of "practice of medicine" and exceptions from this article, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, made the provisions of this section applicable to naturopathic practitioners and naprapathic practitioners, revised the definition of "unprofessional or dishonorable conduct" as used in this section, including removing "criminal abortion" from the definition of "unprofessional or dishonorable conduct"; in Subsection A, after "unable to practice", deleted "medicine" and added "as a physician", after

"genetic", deleted "counseling" and added "counselor, a naturopathic practitioner or naprapathic practitioner"; and in Subsection D, Paragraph D(1), after "abetting", deleted "a criminal abortion" and added "an illegal procedure", in Paragraph D(14), after "certified copy of the record of", deleted "suspension or revocation of the state making the suspension or revocation" and added "disciplinary action or sanction taken by another jurisdiction", in Paragraph D(19), after "negligent acts", added "or a pattern of conduct otherwise described in this section or in violation of a board rule", in Paragraph D(22), after "failure to report to the board", added "the denial of licensure", and in Paragraph D(32), after "derived from the", added "current or".

The 2017 amendment, effective June 16, 2017, included the use of conversion therapy on a minor in the list of acts that are deemed unprofessional or dishonorable conduct under this section, provided that the New Mexico medical board may revoke or suspend any license issued by the board if any licensee is guilty of using conversion

therapy on a minor, and defined certain terms as used in this section; in Subsection A, after "anesthesiologist assistant", deleted "or"; in Subsection D, added Paragraph D(39); and in Subsection E, added Paragraph E(1) and paragraph designation "(2)" preceding the remaining language from former Subsection E, and added Paragraphs E(3) through E(5).

2008 Multiple Amendments. — Laws 2008, ch. 54, § 13, effective July 1, 2008, in Subsection A, after "anesthesiologist assistant", added "or engage in the practice of polysomnography".

Laws 2008, ch. 53, § 12, effective July 1, 2009, in Subsection A, after "anesthesiologist assistant", added "or practice genetic counseling".

The 2005 amendment, effective April 5, 2005, in Subsection D(14), added that "unprofessional or dishonorable conduct" includes the denial of a license by another state; and in Subsection D(28), deleted the qualification that the licensee represent or infer that the activity is a legitimate part of the patient's treatment.

The 2003 amendment, effective June 20, 2003, re-wrote this section to the extent that a detailed comparison is impracticable.

The 2001 amendment, effective April 2, 2001, inserted "or conviction of a misdemeanor associated with the practice of medicine" in Paragraph D(6).

The 1997 amendment, effective June 20, 1997, substituted "Impaired Health Care Provider Act" for "Impaired Physician Act" at the end of Subsection A, substituted "discipline imposed on a licensee to practice medicine by another state, including probation, suspension or revocation" for "the suspension or revocation by another state of a license to practice medicine" at the beginning of Paragraph D(14), added Paragraph D(30), and made minor stylistic changes in Subsections B and D.

The 1994 amendment, effective May 18, 1994, added the second sentence and added "or the Impaired Physician Act" in the last sentence in Subsection A; substituted "the physician" for "he" in Subsection B; substituted "the" for "his" preceding "period of suspension" and "the physician's" for "his" preceding "license reinstated" in Subsection C; substituted "the physician" for "him" in Subsection D(2); deleted "annual" preceding "renewal" in Subsection D(8); substituted "the physician" for "his" twice and "the physician" for "him" in Subsection D(9); substituted "the physician's" for "his" in Subsection D(10); added "administering or dispensing" following "prescribing" in Subsection D(17); substituted "the physician" for "him" in Subsection D(21); added "administering or dispensing of any drug or medicine" in Subsection D(26); and substituted "for" for "of" following "inducement" in Subsection E.

The 1991 amendment, effective June 14, 1991, in Subsection D, added Paragraphs (27) and (28), redesignated former Paragraph (27) as Paragraph (29) and made a related stylistic change and made a minor stylistic change in Subsection A.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-14 NMSA 1978, inserted in the section heading "licensee may be fined, censured or reprimanded", "unprofessional and dishonorable conduct defined", and "fees and expenses"; in Subsection A twice substituted "may" for "shall" and inserted "and may fine, censure or reprimand any licensee" in the first sentence, and deleted "in connection with the issuance, renewal, suspension or revocation of licenses" following "proceedings" in the second sentence; designated the former third and fourth sentences of Subsection A as present Subsection B; designated the former fifth and sixth sentences of Subsection A as present Subsection C, while substituting "61-6-20" for "61-6-18" at the end of the last sentence therein; redesignated former Subsection B as present Subsection D; substituted "confidence" for "secret" in Subsection D(5); substituted all of

the present language of Subsection D(8) beginning with "annual" for "an annual registration"; added all of the language of Subsection D(10) following "registration"; substituted the present provisions of Subsection D(15) for "making a fraudulent claim"; added present Subsections D(18) through D(26); redesignated former Subsection D(18) as present Subsection D(27); redesignated former Subsection C as present Subsection E; deleted former Subsection D, relating to hospital report of loss of physician's privilege; added Subsections F and G; redesignated former Subsection E as present Subsection H; in Subsection H substituted "entity" for "company", inserted "or indemnifying physicians for professional liability", and substituted "settlements or judgments" for "malpractice claims"; and made minor stylistic changes throughout the section.

ANNOTATIONS

Due process. — Former Subsection D(27) (now Subsection D(29)) of this section, defining "unprofessional or dishonorable conduct" to include conduct unbecoming in one licensed to practice medicine or detrimental to the best interests of the public, is not void for vagueness. *McDaniel v. N.M. Bd. of Med. Exam'rs*, 1974-NMSC-062, 86 N.M. 447, 525 P.2d 374.

Terms of probation not unconstitutionally vague. — Where one of the terms of probation imposed by the board on a physician found guilty of unprofessional conduct for falsely prescribing demerol for the alleged use of another when in fact the drug was for personal use was that the doctor not take or have in the doctor's possession "any dangerous drugs" without the consent of a psychiatrist, and the physician thereafter prescribed the drug ritalin for a patient and diverted some of it for personal use, revocation of the physician's license for violating probation was justified, as under the facts the terms thereof were not unconstitutionally vague. *McDaniel v. N.M. Bd. of Med. Exam'rs*, 1974-NMSC-062, 86 N.M. 447, 525 P.2d 374.

Prior judicial determination unnecessary. — An administrative determination of "unlawful, illegal or unauthorized" conduct sufficient to support a conclusion of "unprofessional conduct," as provided in this section, is not dependent upon a prior judicial determination of criminal guilt. *Strance v. N.M. Bd. of Med. Exam'rs*, 1971-NMSC-081, 83 N.M. 15, 487 P.2d 1085.

Restraint of proceedings. — Board of medical examiners has exclusive jurisdiction regarding the granting and revoking of certificates admitting physicians and surgeons to practice, and as statutes do not provide for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and was, therefore, an interested party. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Subsection D(5) does not create privilege; it only describes ethical constraints placed upon a physician. *Trujillo v. Puro*, 1984-NMCA-050, 101 N.M. 408, 683 P.2d 963, cert. denied, 101 N.M. 362, 683 P.2d 44.

Reinstatement after revocation. — Board of medical examiners has the power to suspend a license inherent in its power to revoke, but when revocation is accomplished, the only method of reinstating revoked licensee to full privileges is by the means of reapplication. 1953-54 Op. Att'y Gen. No. 53-5839.

Under former law, the legislature did not define unprofessional conduct, nor prohibit advertising by physicians; former statute did not go far enough to give power to the board of medical examiners to revoke the license of a physician for advertising unless said advertising was false, immoral and against the public welfare. 1939-40 Op. Att'y Gen. No. 39-3048.

No lay control of professional medical judgments. — An entity, such as a clinic, hospital or other similar corporate entity employing physicians, may not engage in conduct amounting to the practice of medicine by exerting lay control of professional medical judgments. 1987 Op. Att'y Gen. No. 87-39.

Law reviews. — For article, "New Mexico's 1969 Criminal Abortion Law," see 10 Nat. Res. J. 591 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 100.

Validity of statute providing for revocation of license of physician or surgeon, 5 A.L.R. 94, 79 A.L.R. 323.

Liquor law, violation of, as infamous crime or offense involving moral turpitude for which physician's license may be revoked, 40 A.L.R. 1049, 71 A.L.R. 217.

Advertising by physician, surgeon or other person professing healing arts, constitutionality of statute or ordinance prohibiting or regulating, 54 A.L.R. 400.

Grounds for revocation of valid license of physician or surgeon, 54 A.L.R. 1504, 82 A.L.R. 1184.

Moral turpitude, what offenses involve, within statute providing grounds for denying license, 109 A.L.R. 1459.

Conviction, what amounts to within statute making conviction ground for refusing license, 113 A.L.R. 1179.

Practice of medicine, dentistry or law through radio broadcasting stations, newspapers or magazines, 114 A.L.R. 1506.

Acquittal or dismissal in criminal prosecution, effect of, on revocation of license of physician, 123 A.L.R. 779.

Statutory power to revoke or suspend license of physician for "unprofessional conduct" as exercisable without antecedent adoption of regulation as to what shall constitute such conduct, 163 A.L.R. 909.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Conviction as proof of ground for revocation or suspension of license of physician or surgeon where conviction as such is not an independent cause, 167 A.L.R. 228.

Governing law as to existence or character of offense for which one has been convicted in a federal court or court of another state, as bearing upon his qualification to practice as physician or surgeon, 175 A.L.R. 803.

Professional incompetency as ground for disciplinary measure, 28 A.L.R.3d 487.

Duty of physician or surgeon to warn or instruct nurse or attendant, 63 A.L.R.3d 1020.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 A.L.R.3d 854.

Use, in attorney or physician disciplinary proceeding, of evidence obtained by wrongful police action, 20 A.L.R.4th 546.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice, 22 A.L.R.4th 668.

Imposition of civil penalties, under state statute, upon medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare programs for providing medical services, 32 A.L.R.4th 671.

Physician's or other healer's conduct, or conviction of offense, not directly related to medical practice, as ground for disciplinary action, 34 A.L.R.4th 609.

Recovery for emotional distress resulting from statement of medical practitioner or official, allegedly constituting outrageous conduct, 34 A.L.R.4th 688.

Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine, 51 A.L.R.4th 1147.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

Existence, nature, and application to medical professional disciplinary board of privilege against disclosure of identity of informer, 86 A.L.R.4th 1024.

Liability of doctor or other health practitioner to third party contracting contagious disease from doctor's patient, 3 A.L.R.5th 370.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

False or fraudulent statements or nondisclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner, 32 A.L.R.5th 57.

Denial by hospital of staff privileges or referrals to physician or other health care practitioner as violation of Sherman Act (15 USCS § 1 et seq.), 89 A.L.R. Fed. 419.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 35 to 43, 50, 53 to 57.

61-6-15.1. Summary suspension or restriction of license.

A. The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with or at any time after the initiation of proceedings for a hearing provided under the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], if the board finds that evidence in its possession indicates that the licensee:

- (1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice;
- (2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or
- (3) has pled guilty to or been found guilty of any offense related to the practice of medicine or for any violent criminal offense in this state or a substantially equivalent criminal offense in another jurisdiction.

B. A licensee is not required to comply with a summary action until service has been made or the licensee has actual knowledge of the order, whichever occurs first.

C. A person whose license is suspended or restricted under this section is entitled to a hearing by the board pursuant to the Uniform Licensing Act within fifteen days from the date the licensee requests a hearing.

History: Laws 2008, ch. 74, § 1.

Effective dates. — Laws 2008, ch. 74 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

61-6-16. Reporting of settlements and judgments, professional review actions and acceptance of surrendered license; immunity from civil damages; penalty.

A. All entities that make payments under a policy of insurance, self-insurance or otherwise in settlement or satisfaction of a judgment in a medical malpractice action or claim, hospitals, health care entities and professional review bodies shall report to the board all payments relating to malpractice actions or claims arising in New Mexico that involve a licensee and that are paid as a direct result of the licensee's care, all appropriate professional review actions of licensees and the acceptance or surrender of clinical privileges by a licensee while under investigation or in lieu of an investigation. For the purposes of this section, the meaning of these terms shall be as contained in Section 431 of the federal Health Care Quality Improvement Act of 1986, 42 USCA Section 11151.

B. The hospitals required to report under this section, health care entities or professional review bodies that provide such information in good faith shall not be subject to suit for civil damages as a result of providing the information.

C. A hospital, health care entity or professional review body failing to comply with the reporting requirements provided in this section shall be subject to civil penalty not to exceed ten thousand dollars (\$10,000).

History: 1978 Comp., § 61-6-16, enacted by Laws 1989, ch. 269, § 12; 2003, ch. 19, § 16; 2008, ch. 74, § 2.

Recompilations. — Laws 1989, ch. 269, § 13 recom-piled former 61-6-16 NMSA 1978, relating to exceptions from this article, as 61-6-17 NMSA 1978, effective July 1, 1989.

The 2008 amendment, effective May 14, 2008, in Sub-section A, required reports to the board of payments that involve a licensee.

The 2003 amendment, effective June 20, 2003, in-serted "federal" following "Section 431 of the" in Subsec-tion A; in Subsection B, substituted "The" for "No" at the

beginning, inserted "not" following "good faith shall", sub-stituted "of providing the information" for "thereof" at the end; and substituted "ten thousand dollars (\$10,000)" for "two thousand dollars (\$2,000)" in Subsection C.

ANNOTATIONS

Law reviews. — For case note, "Workers' Compensa-tion Law: A Clinical Psychologist Is Qualified to Give Ex-pert Medical Testimony Regarding Causation: Madrid v. University of California, d/b/a Los Alamos National Labo-ratory," see 18 N.M.L. Rev. 637 (1988).

61-6-17. Exceptions to act.

The Medical Practice Act shall not apply to or affect:

- A. gratuitous services rendered in cases of emergency;
- B. the domestic administration of family remedies;
- C. the practice of midwifery as regulated in this state;
- D. commissioned medical officers of the armed forces of the United States and medical officers of the commissioned corps of the United States public health service or the United States depart-ment of veterans affairs in the discharge of their official duties or within federally controlled facili-ties; provided that such persons who hold medical licenses in New Mexico shall be subject to the provisions of the Medical Practice Act; and provided further that all such persons shall be fully licensed to practice medicine in one or more jurisdictions of the United States;
- E. the practice of medicine by a physician, unlicensed in New Mexico, who performs emergency medical procedures in air or ground transportation on a patient from inside of New Mexico to an-other state or back; provided that the physician is duly licensed in that state;
- F. the practice, as defined and limited under their respective licensing laws, of:
 - (1) dentistry;
 - (2) podiatry;
 - (3) nursing;
 - (4) optometry;
 - (5) psychology;

- (6) chiropractic;
- (7) pharmacy;
- (8) acupuncture and oriental medicine; or
- (9) physical therapy;

G. an act, task or function of laboratory technicians or technologists, x-ray technicians, nurse practitioners, medical or surgical assistants or other technicians or qualified persons permitted by law or established by custom as part of the duties delegated to them by:

- (1) a licensed physician or a hospital, clinic or institution licensed or approved by the public health division of the department of health or an agency of the federal government; or
- (2) a health care program operated or financed by an agency of the state or federal government;

H. a properly trained medical or surgical assistant or technician or professional licensee performing under the physician's employment and direct supervision or a visiting physician or surgeon operating under the physician's direct supervision a medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed in its customary manner and if the person does not hold the person's own self out to the public as being authorized to practice medicine in New Mexico. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts;

I. the practice of the religious tenets of a church in the ministration to the sick or suffering by mental or spiritual means as provided by law; provided that the Medical Practice Act shall not be construed to exempt a person from the operation or enforcement of the sanitary and quarantine laws of the state;

J. the acts of a physician licensed under the laws of another state of the United States who is the treating physician of a patient and orders home health or hospice services for a resident of New Mexico to be delivered by a home and community support services agency licensed in this state; provided that a change in the condition of the patient shall be physically reevaluated by the treating physician in the treating physician's jurisdiction or by a licensed New Mexico physician;

K. a physician licensed to practice under the laws of another state who acts as a consultant to a New Mexico-licensed physician on an irregular or infrequent basis, as defined by rule of the board; and

L. a physician who engages in the informal practice of medicine across state lines without compensation or expectation of compensation; provided that the practice of medicine across state lines conducted within the parameters of a contractual relationship shall not be considered informal and is subject to licensure and rule by the board.

History: 1953 Comp., § 67-5-10.1, enacted by Laws 1973, ch. 361, § 8; 1978 Comp., § 61-6-16, recompiled as § 61-6-17 by Laws 1989, ch. 269, § 13; 1991, ch. 148, § 4; 1991, ch. 164, § 1; 1993, ch. 158, § 7; 1994, ch. 80, § 8; 1997, ch. 221, § 3; 2000, ch. 44, § 1; 2001, ch. 96, § 5; 2003, ch. 19, § 17; 2017, ch. 103, § 5; 2021, ch. 54, § 35.

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-17 NMSA 1978, as amended by Laws 1982, ch. 110, § 2, relating to fees for license by endorsement application and for examination, effective July 1, 1989.

Cross references. — For the Public Health Act, see 24-1-1 NMSA 1978 et seq.

The 2021 amendment, effective June 18, 2021, removed osteopathy from the list of practices to which the Medical Practice Act does not apply or affect, and removed a provision providing that the Medical Practice Act does not apply to the acts, tasks or functions of a physician assistant; in Subsection F, deleted former Paragraph F(1) and redesignated former Paragraphs F(2) through F(10) as Paragraphs F(1) through F(9), respectively; and deleted former Subsection G and redesignated former Subsections H through M as Subsections G through L, respectively.

The 2017 amendment, effective June 16, 2017, provided that the Medical Practice Act shall not apply to or affect an act, task or function performed by a physician assistant in collaboration with a licensed physician in certain circumstances, and made technical changes; in Subsection D, after "medical officers of the", added "commissioned corps of the", after "public health service or", deleted "the veterans administration of", after the second occurrence of "United States", added "department of veterans affairs"; and in Subsection G, in the introductory clause, after "at the direction of and", deleted "under" and added "with", and after "the supervision of", added "or in collaboration with", in Paragraph G(2), after "performed", deleted "at the direction of and under" and added "with", and after "supervision of", added "a licensed physician or in collaboration with", and in Paragraph G(3), after "supervising", added "or collaborating", and after "within the scope of the", added "physician".

The 2003 amendment, effective June 20, 2003, rewrote Paragraph G(1).

The 2001 amendment, effective April 2, 2001, added Subsections L and M.

The 2000 amendment, effective May 17, 2000, substituted "biennially" for "annually" in Subsection G(1) and added Subsection K.

The 1997 amendment, effective June 20, 1997, substituted "supervising licensed physician" for "supervising physician" in Paragraph G(3), and in Subsection I, inserted "or a visiting physician or surgeon operating under the physician's direct supervision" near the middle of the first sentence and added "in New Mexico" at the end of the first sentence.

The 1994 amendment, effective May 18, 1994, added "employment and" and deleted "not in violation of any other statute" following "customary manner" in Subsection I.

The 1993 amendment, effective June 18, 1993, inserted "and oriental medicine" in Paragraph (9) of Subsection F; and substituted "department of health" for "health and environment department" in Paragraph (1) of Subsection H.

The 1991 amendment, effective June 14, 1991, in Subsection H, rewrote the introductory paragraph following "nurse practitioners" which read "or medical technologists permitted by law or established by custom as part of the duties required in their employment by" and substituted "public health division" for "health services division" in Paragraph (1); added Subsection I; designated a formerly undesignated provision as Subsection J; and made a related stylistic change. Laws 1991, ch. 148, § 4 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 164, § 1. See 12-1-8 NMSA 1978.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-16 NMSA 1978; substituted "Medical Practice Act" for "Sections 67-5-1 through 67-5-23 NMSA 1978" in the introductory paragraph and Subsection I; substituted "regulated in this state" for "regulated by the health and social services department" in Subsection C; substituted present Subsection D for former Subsection D, which read "surgeons of the United States in the discharge of their official duties"; substituted present Subsection E for former Subsection F, which read as set out in the 1986 Replacement Pamphlet;

added Subsections F(9) and F(10); made minor stylistic changes in Subsections G(1) and G(2); substituted present Subsection G(3) for former Subsection G(3), which read as set out in the 1986 Replacement Pamphlet; in Subsection H(1) inserted "licensed physician or a" and substituted "health services division of the health and environment department" for "health and social services department"; and, in Subsection I, inserted "as provided by law".

ANNOTATIONS

Chiropractors' services are not physicians' services under the medicaid program. Chiropractors' services thus are not included in the general categories of medical treatment which must be included in the state plan. *Katz v. N.M. Dep't of Human Servs.*, 1981-NMSC-012, 95 N.M. 530, 624 P.2d 39.

Delegation of dispensation of dangerous drugs. — The board of medical examiners acted outside the scope of its authority and contrary to law when it promulgated a rule allowing physicians, in certain circumstances, to delegate to physician's assistants the task of dispensing dangerous drugs. *N.M. Pharm. Ass'n v. State*, 1987-NMSC-054, 106 N.M. 73, 738 P.2d 1318 (decided under prior law).

Board to determine credentials. — While a New Mexico license was not required as a prerequisite to the employment of a doctor by the Carrie Tingley hospital, only the New Mexico board of medical examiners had authority to determine the present standing or validity of the doctor's credentials in other states. 1957-58 Op. Att'y Gen. No. 58-136.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons, and Other Healers §§ 35 to 50.

Optometry as within statute relating to practice of medicine, 22 A.L.R. 1173.

Dentist as physician or surgeon within statutes, 115 A.L.R. 261.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 26, 27.

61-6-17.1. Temporary licensure exemption; out-of-state physicians; out-of-state sports teams.

A. An individual who is licensed in good standing to practice medicine in another state, and whom the board has not previously found to have violated a provision of the Medical Practice Act, may practice medicine without a license granted by the board if the individual has a written agreement with an out-of-state sports team to provide care to team members and staff traveling with the team for a specific sporting event to take place in this state; provided that:

(1) the individual has a written agreement with the out-of-state sports team governing body to provide health care services to an out-of-state sports team athlete or staff member at a scheduled sporting event;

(2) the individual's practice is limited to medical care to assist injured and ill players and coordinate appropriate referral to in-state health care providers as needed;

(3) the services to be provided by the individual are within the scope of practice authorized pursuant to the Medical Practice Act and rules of the board;

(4) the individual has professional liability coverage for the duration of the sporting event;

(5) the individual shall not:

(a) provide care or consultation to a resident of this state, other than a member of the out-of-state sports team during a sporting event; or

(b) practice medicine in the state, outside of the sporting event;

(6) the authorization to practice without a board-issued license pursuant to this section shall be valid only during the time of the sporting event, while the individual granted the

authorization is providing care to the out-of-state sports team, and is limited to the duration of the sporting event;

- (7) the individual or out-of-state sports team shall report to the board any potential:
 - (a) medical license violation;
 - (b) practice negligence; or
 - (c) unprofessional or dishonorable conduct, as those terms are defined in board rules;
 - (8) the individual's practice of medicine pursuant to this section shall be subject to board oversight, investigation and discipline in accordance with the provisions of the Medical Practice Act; and
 - (9) the board may report to a licensing board in a state in which an individual practicing medicine pursuant to this section is licensed to practice medicine any findings it makes pursuant to an investigation or disciplinary action that the board undertakes.
- B. The board shall adopt and promulgate rules to implement the provisions of this section.
- C. As used in this section:
- (1) "out-of-state sports team" means an entity or organization:
 - (a) for which athletes engage in a sporting event;
 - (b) headquartered or organized under laws other than the laws of New Mexico; and
 - (c) a majority of whose staff and athletes are residents of another state; and
 - (2) "sporting event" means a scheduled sporting event involving an out-of-state sports team for which an admission fee is charged to the public, including any preparation or practice related to the activity.

History: Laws 2019, ch. 184, § 1; 2021, ch. 54, § 36.

The 2021 amendment, effective June 18, 2021, removed all references to surgery; and in Subsection A, after "good standing to practice medicine", deleted "and surgery", in Paragraph A(8), after "the individual's practice of

medicine", deleted "and surgery", in Paragraph A(9), after "an individual practicing medicine", deleted "or surgery", and after "licensed to practice medicine", deleted "and surgery".

61-6-18. Medical students; interns; residents; fellows.

A. Nothing in the Medical Practice Act shall prevent a medical student properly registered or enrolled in a medical college or school in good standing from diagnosing or treating the sick or afflicted, provided that the medical student does not receive compensation for services and such services are rendered under the supervision of the school faculty as part of the student's course of study.

B. Any intern, resident or fellow who is appointed in a board-approved residency or fellowship training program may pursue such training after obtaining a postgraduate training license from the board. The board may adopt by rule specific education or examination requirements for a postgraduate training license.

C. Any person serving in the assigned rotations and performing the assigned duties in a board-approved residency or fellowship training program accredited in New Mexico may do so for an aggregate period not to exceed eight years or completion of the residency, whichever is shorter.

D. The board may require any applicant for a postgraduate training license required in Subsections B and C of this section to personally appear before the board or a designated member of the board for an interview.

E. Every applicant for a postgraduate training license under this section shall pay the fees required by Section 61-6-19 NMSA 1978.

F. Postgraduate training licenses shall be renewed annually and shall be effective during each year or part of a year of postgraduate training.

History: 1978 Comp., § 61-6-18, enacted by Laws 1989, ch. 269, § 14; 1994, ch. 80, § 9; 2005, ch. 159, § 5; 2021, ch. 54, § 37.

Recompilations. — Laws 1989, ch. 269, § 16 recom-piled former 61-6-18 NMSA 1978, relating to penalty for practicing without a license, as 61-6-20 NMSA 1978, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, included "fellows" and "fellowships" within the provisions of this section; after "residents", added "fellows"; in Subsection B, after "resident", added "or fellow", and after "residency", added "or fellowship"; and in Subsection C, after "residency", added "or fellowship".

The 2005 amendment, effective April 5, 2005, in Subsection B, provided that an intern or resident who is appointed to a board-approved residency training program may pursue the training after obtaining a license from the board and adds the provision that the board may adopt by rule specific education or examination requirement for a postgraduate training license.

The 1994 amendment, effective May 18, 1994, substituted "Any" for "Nothing in the Medical Practice Act shall require an," substituted "in New Mexico may" for "to obtain a license to" and added "after obtaining a postgraduate training license from the board" in Subsection B, rewrote Subsection C, and added Subsections D, E and F.

61-6-18.1. Public service license.

- A. Applicants for a public service license shall meet all requirements for licensure and shall:
- (1) be enrolled in a board-approved residency or fellowship training program either in New Mexico or in another jurisdiction;
 - (2) obtain written approval from the training program director of the applicant to pursue a public service practice opportunity outside the residency training program; and
 - (3) satisfy other reasonable requirements imposed by the board.
- B. A physician with one year of postdoctoral training may apply for a public service license to practice under the direct supervision of a licensed physician or with immediate access to a licensed physician by electronic means when the public service physician is employed in a medically underserved area.
- C. A public service license shall expire on September 1 of each year and may be renewed by the board.
- D. An applicant for a public service license shall pay the required fees set forth in Section 61-6-19 NMSA 1978.

History: 1978 Comp., § 61-6-18.1, enacted by Laws 1994, ch. 80, § 10; 2003, ch. 19, § 18; 2005, ch. 159, § 6; 2021, ch. 54, § 38.

The 2021 amendment, effective June 18, 2021, included "fellowships" within the provisions of this section; and in Subsection A, Paragraph A(1), after "residency", added "or fellowship".

The 2005 amendment, effective April 5, 2005, deleted former Subsection A(3), which required applicants to obtain advance written approval from the training program director of the applicant to return to the residency training program after public service and provided in Subsection C that public service licenses expire on September 1 of each year.

The 2003 amendment, effective June 20, 2003, in Subsection A, rewrote the undesignated paragraph, added present Paragraph (1) and redesignated former Paragraphs (1) and (2) as present Paragraphs (2) and (3), substituted "obtain written approval from the" for "obtains approval from his" at the beginning of present Paragraph (2), substituted "obtain advance written approval from the" for "obtains advance approval from his" at the beginning of present Paragraph (3), inserted "of the applicant" following "program director" in present Paragraphs (2) and (3), substituted "satisfy" for "satisfies any" at the beginning of Paragraph (4); in Subsection B, substituted "or has immediate access to a licensed physician by electronic means when the public service physician" for "or when the physician" following "licensed physician or".

61-6-19. Fees.

- A. Except as provided in Section 61-1-34 NMSA 1978, the board shall impose the following fees:
- (1) an application fee not to exceed five hundred dollars (\$500) for licensure by endorsement as provided in Section 61-6-13 NMSA 1978;
 - (2) an application fee not to exceed five hundred dollars (\$500) for licensure by examination as provided in Section 61-6-11 NMSA 1978;
 - (3) a triennial renewal fee not to exceed five hundred dollars (\$500);
 - (4) a fee of twenty-five dollars (\$25.00) for placing a physician's license or a physician assistant's license on inactive status;
 - (5) a late fee not to exceed one hundred dollars (\$100) for physicians who renew their license within forty-five days after the required renewal date;
 - (6) a late fee not to exceed two hundred dollars (\$200) for physicians who renew their licenses between forty-six and ninety days after the required renewal date;
 - (7) a reinstatement fee not to exceed seven hundred dollars (\$700) for reinstatement of a revoked, suspended or inactive license;

- (8) a reasonable administrative fee for verification and duplication of license or registration and copying of records;
- (9) a reasonable publication fee for the purchase of a publication containing the names of all practitioners licensed under the Medical Practice Act;
- (10) an impaired physician fee not to exceed one hundred fifty dollars (\$150) for a three-year period;
- (11) an interim license fee not to exceed one hundred dollars (\$100);
- (12) a temporary license fee not to exceed one hundred dollars (\$100);
- (13) a postgraduate training license fee not to exceed fifty dollars (\$50.00) annually;
- (14) an application fee not to exceed one hundred fifty dollars (\$150) for physician assistants applying for initial licensure;
- (15) a licensure fee not to exceed one hundred fifty dollars (\$150) for physician assistants biennial license renewal and registration of supervising or collaborating licensed physician;
- (16) a late fee not to exceed fifty dollars (\$50.00) for physician assistants who renew their licensure within forty-five days after the required renewal date;
- (17) a late fee not to exceed seventy-five dollars (\$75.00) for physician assistants who renew their licensure between forty-six and ninety days after the required renewal date;
- (18) a reinstatement fee not to exceed one hundred dollars (\$100) for physician assistants who reinstate an expired license;
- (19) a fee not to exceed three hundred dollars (\$300) annually for a physician supervising a clinical pharmacist;
- (20) an application and renewal fee for a telemedicine license not to exceed nine hundred dollars (\$900);
- (21) a reasonable administrative fee, not to exceed the current cost of application and license or renewal for a license, that may be charged for reprocessing applications and renewals that include minor but significant errors and that would otherwise be subject to investigation and possible disciplinary action; and
- (22) a reasonable fee as established by the department of public safety for nationwide and statewide criminal history screening of applicants and licensees.

B. All fees are nonrefundable and shall be used by the board to carry out its duties efficiently.

History: 1978 Comp., § 61-6-19, enacted by Laws 1989, ch. 269, § 15; 1994, ch. 80, § 11; 1997, ch. 187, § 9; 1997, ch. 221, § 4; 2001, ch. 96, § 6; 2003, ch. 19, § 19; 2008, ch. 74, § 3; 2017, ch. 103, § 7; 2020, ch. 6, § 16; 2021, ch. 54, § 39.

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-19 NMSA 1978, as amended by Laws 1969, ch. 46, § 9, relating to rules and regulations of the board, effective July 1, 1989. For present comparable provisions, see 61-6-5(B) NMSA 1978.

The 2021 amendment, effective June 18, 2021, increased certain fees imposed by the New Mexico medical board; in Subsection A, Paragraph A(1), changed "four hundred dollars (\$400)" to "five hundred dollars (\$500)", in Paragraph A(2), changed "four hundred dollars (\$400)" to "five hundred dollars (\$500)", in Paragraph A(3), changed "four hundred fifty dollars (\$450)" to "five hundred dollars (\$500)", in Paragraph A(7), changed "six hundred dollars (\$600)" to "seven hundred dollars (\$700)", in Paragraph A(20), changed "four hundred dollars (\$400)" to "nine hundred dollars (\$900)", and in Paragraph A(21), after "cost of application", added "and license or renewal".

The 2017 amendment, effective June 16, 2017, removed the fee charged to a physician assistant for each change of supervising licensed physician, and made technical changes; in Subsection A, Paragraph A(15), after "biennial", deleted "licensing" and added "license renewal", and after "supervising", added "or collaborating", and deleted Paragraph A(19), which provided a fee for each change of a supervising licensed physician for a physician assistant, and redesignated the succeeding paragraphs accordingly.

The 2008 amendment, effective May 14, 2008, added Paragraphs (22) and (23) of Subsection A.

The 2003 amendment, effective June 20, 2003, in Subsection A, deleted Paragraph (3) which read: "an examination fee equal to the cost of purchasing the examination plus an administration fee not to exceed fifty percent of that cost" and redesignated Paragraphs (4) to (20) as (3) to (21) and inserted present Paragraphs (18) and (19), substituted "six hundred dollars (\$600)" for "the current application fee" following "not to exceed" in present Paragraph (7), inserted "licensed" near the end of present Paragraph (15).

The 2001 amendment, effective April 2, 2001, in Subsection A, substituted "for physicians who renew their license" for "for licensees who fail to renew their license" in Paragraph (6), substituted "physicians who renew their licenses between forty-six and ninety days" for "licensees who fail to renew their licenses from forty-six days to ninety days" in Paragraph (7); deleted "fail to" preceding "renew their licensure" in Paragraphs (17) and (18), and added Paragraph (20).

The 1997 amendment, effective June 20, 1997, in Subsection A, added Paragraphs (5) and (17) to (19), redesignated former Paragraphs (5) to (15) as Paragraphs (6) to (16), rewrote Paragraphs (6), (7) and (16), and, in Paragraph (15), substituted "licensure" for "registration". Laws 1997, ch. 187, § 9 also amended this section. The section was set out as amended by Laws 1997, ch. 221, § 4. See 12-1-8 NMSA 1978.

The 1994 amendment, effective May 18, 1994, added Paragraph (A)(13) and redesignated former Paragraphs

A(13) and A(14) as Paragraphs A(14) and A(15), respectively.

ANNOTATIONS

Disposition of fees. — The application fees paid pursuant to this section by applicants for licenses to practice medicine revert to the general fund at the end of the licensing year, 1959-60 Op. Att'y Gen. No. 60-28.

Licensing year. — The licensing year for physicians licensed to practice medicine in New Mexico is the calendar year, 1959-60 Op. Att'y Gen. No. 60-28 (rendered under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 22; 73 C.J.S. Public Administrative Law and Procedure § 8.

61-6-20. Practicing without license; penalty.

A. Any person who practices medicine or who attempts to practice medicine without first complying with the provisions of the Medical Practice Act and without being the holder of a license entitling him to practice medicine in New Mexico is guilty of a fourth degree felony.

B. Any person who practices medicine across state lines or who attempts to practice medicine across state lines without first complying with the provisions of the Medical Practice Act and without being the holder of a telemedicine license entitling him to practice medicine across state lines is guilty of a fourth degree felony.

C. Any person convicted pursuant to Subsection A or B of this section shall be sentenced under the provisions of the Criminal Sentencing Act [Chapter 31, Article 18 NMSA 1978] to imprisonment for a definite period not to exceed eighteen months and, in the discretion of the sentencing court, to a fine not to exceed five thousand dollars (\$5,000), or both. Each occurrence of practicing medicine or attempting to practice medicine without complying with the Medical Practice Act shall be a separate violation.

History: Laws 1923, ch. 44, § 9; C.S. 1929, § 110-110; 1941 Comp., § 51-510; 1953 Comp., § 67-5-12; Laws 1955, ch. 44 [§ 1]; 1969, ch. 46, § 8; 1978 Comp., § 61-6-18, recompiled as § 61-6-20 by Laws 1989, ch. 269, § 16; 2001, ch. 96, § 7.

Repeals. — Laws 1979, ch. 132, § 9, repealed former 61-6-20 NMSA 1978, as enacted by Laws 1977, ch. 207, § 1, relating to rules and regulations for care of infants born alive and for experimentation with aborted fetuses, effective March 27, 1979. For present provisions, see 24-9A-3 and 24-9A-4 NMSA 1978.

Cross references. — For injunction to prevent unauthorized practice of medicine, see 61-6-22 NMSA 1978.

The 2001 amendment, effective April 2, 2001, added the provision that doctors who practice or attempt to practice medicine across state lines without having a license to do so and without complying with the Medical Practice Act are guilty of a fourth degree felony and are subject to the penalties provided by Subsection C.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-18 NMSA 1978; added the second sentence, and, in the first sentence, substituted "the Medical Practice Act" for "Sections 67-5-23 NMSA 1978" and the present language following "is guilty of" for "felony, upon conviction, punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment in the county jail not to exceed one year or by both such fine and imprisonment in the discretion of the court", and made minor stylistic changes.

ANNOTATIONS

Injunction not precluded. — The state has authority to punish one who engages in the practice of medicine without a license, but this remedy is not exclusive and does not preclude injunction to protect the public health, morals, safety and welfare from irreparable injury. *State ex rel. Marron v. Compere*, 1940-NMSC-041, 44 N.M. 414, 103 P.2d 273.

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Res. J. 599 (1972).

For comment, "Perspectives on the Abortion Decision," see 9 N.M.L. Rev. 175 (1978-79).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 130.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 16 A.L.R. 709, 37 A.L.R. 680, 42 A.L.R. 1342, 54 A.L.R. 600.

Liability to patient for results of medical or surgical treatment by one not licensed as required by law, 44 A.L.R. 1418, 57 A.L.R. 978.

Entrapment to commit offense of practicing medicine without license, 86 A.L.R. 272.

Corporation or individual not himself licensed, right of, to practice medicine or surgery through licensed employees, 103 A.L.R. 1240.

Health service plan as violation of medical practice acts, 119 A.L.R. 1290.

One who fills prescriptions under reciprocal arrangement with physician or optometrist as subject to charge of practice of medicine or optometry without license, 121 A.L.R. 1455.

Group medical and hospital service plan as illegal practice of medicine, 167 A.L.R. 327.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice medicine from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

Illegal practice of medicine under statute, ordinance or other measure involving chemical treatment of public water supply, 43 A.L.R.2d 453.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28 to 33.

61-6-21. Continuing medical education; penalty.

A. For the purpose of protecting the health and well-being of the residents of this state and for maintaining and continuing informed professional knowledge and awareness, the board shall establish mandatory continuing educational requirements for licensees under its authority.

B. The board may suspend the license of a licensee who fails to comply with continuing medical education or continuing education requirements until the requirements are fulfilled and may take any further disciplinary action if the licensee fails to remediate the deficiencies, including revocation of license.

History: 1978 Comp., § 61-6-21, enacted by Laws 1989, ch. 269, § 17; 2003, ch. 19, § 20; 2021, ch. 54, § 40.

Recompilations. — Laws 1989, ch. 269, § 18 recomplied former 61-6-21 NMSA 1978, relating to injunction to prevent practice without a license, as 61-6-22 NMSA 1978, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, required the New Mexico medical board to establish mandatory continuing education requirements for licensees under its authority, and authorized the board to take disciplinary action if licensees fail to comply with continuing medical education; in Subsection A, deleted "The board may establish rules pertaining to continuing medical

education for licensees." and added the remainder of the subsection; and in Subsection B, after "fulfilled", added "and may take any further disciplinary action if the licensee fails to remediate the deficiencies, including revocation of license".

The 2003 amendment, effective June 20, 2003, in Subsection A, deleted "and regulations" near the beginning, substituted "for licensees" for "for physicians and continuing education for physician assistants" at the end; in Subsection B, substituted "license of a licensee" for "license or registration of any physician or physician assistant" near the beginning, and deleted "such time as" following "requirements until".

61-6-22. Injunction to prevent practice without a license.

The attorney general, the prosecuting attorney, the board or any citizen of any county where any person engages in the practice of medicine as defined by the laws of New Mexico without possessing a valid license to do so may, in accordance with the laws of the state governing injunctions, maintain an action in the name of the state to enjoin such person from engaging in the practice of medicine until a valid license to practice medicine is secured from the board. Any person who has been so enjoined who violates the injunction shall be punished for contempt of court. Provided, however, the injunction shall not relieve the person practicing medicine without a valid license from criminal prosecution therefor as provided by law, but such remedy by injunction shall be in addition to any remedy now provided for criminal prosecution of such offender. In charging any person in a petition for injunction or in an information or indictment with a violation of law by practicing medicine without a valid license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of medicine without having a valid license without alleging any further or more particular facts.

History: 1953 Comp., § 67-5-15; Laws 1969, ch. 46, § 10; 1978 Comp., § 61-6-21, recomplied as § 61-6-22 by Laws 1989, ch. 269, § 18.

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-22 NMSA 1978, as amended by Laws 1987, ch. 204, § 1, relating to annual registration fees, effective July 1, 1989. For present comparable provisions, see 61-6-19 NMSA 1978.

Cross references. — For penalty for practicing medicine without a license, see 61-6-18 NMSA 1978.

For injunctions, see Rules 1-065 and 1-066 NMRA.

The 1989 amendment, effective July 1, 1989, renumbered this section which formerly was 61-6-21 NMSA 1978, corrected a misspelling in the section heading, substituted "the board" for "the board of medical examiners" in two places in the first sentence, and made numerous minor stylistic changes.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons, and Other Healers § 122. 43A C.J.S. Injunctions § 242.

61-6-23. Investigation; subpoena.

To investigate a complaint against an applicant or a licensee, the board may issue investigative subpoenas prior to the issuance of a notice of contemplated action.

History: 1978 Comp., § 61-6-23, enacted by Laws 1989, ch. 269, § 19; 2003, ch. 19, § 21; 2021, ch. 54, § 41.

Recompilations. — Laws 1989, ch. 269, § 23 recomplied former 61-6-23 NMSA 1978, relating to issuance and

display of registration certificate, as 61-6-27 NMSA 1978, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, authorized the New Mexico medical board to investigate

complaints against applicants for licensure; and after "complaint against", added "an applicant or".

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

61-6-24. Limitations on actions.

A. No action that would have any of the effects specified in Sections 61-6-15 and 61-6-15.1 NMSA 1978 may be initiated by the board later than two years after it is brought to the board's attention.

B. The time limitation contained in Subsection A of this section shall be tolled by any civil or criminal litigation in which the licensee or applicant is a party arising substantially from the same facts, conduct, transaction or transactions that would be the basis of the board's decision.

History: 1978 Comp., § 61-6-24, enacted by Laws 1989, ch. 269, § 20; 2008, ch. 74, § 4.

Recompilations. — Laws 1989, ch. 269, § 24 recom-piled former 61-6-24 NMSA 1978, relating to practitioners

changing location or beginning practice, as 61-6-28 NMSA 1978, effective July 1, 1989.

The 2008 amendment, effective May 14, 2008, added the reference to Section 61-6-15.1 NMSA 1978.

61-6-25. False statement; penalty.

Any person making a false statement under oath or a false affidavit shall be guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with the Criminal Sentencing Act [Chapter 31, Article 18 NMSA 1978] to eighteen months imprisonment and, in the sentencing court's discretion, to a fine of not more than five thousand dollars (\$5,000).

History: 1978 Comp., § 61-6-25, enacted by Laws 1989, ch. 269, § 21.

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-25 NMSA 1978, as amended by Laws 1969, ch. 46, §

14, relating to publication and distribution of lists of reg-istrants, effective July 1, 1989.

61-6-26. Triennial renewal fees; penalty for failure to renew license.

A. On or before July 1 of every third year, every licensed physician in this state shall apply for a certificate of triennial renewal of license for the ensuing three years. The fact that a licensed physician has not received a renewal form from the board shall not relieve the physician of the duty to renew the license and the omission by the board shall not operate to exempt the physician from the penalties provided by Chapter 61, Article 6 NMSA 1978 for failure to renew his license.

B. All licensed physicians shall pay a triennial renewal fee and impaired physicians fee as provided in Section 61-6-19 NMSA 1978 and shall return the completed renewal form together with the renewal fee and other required documentation.

C. Each application for triennial renewal of license shall state the licensed physician's full name, business address, license number and date and all other information requested by the board.

D. A licensed physician who fails to submit his application for triennial renewal on or before July 1 but who submits his application for triennial renewal by August 15 shall be assessed a late fee as provided in Section 61-6-19 NMSA 1978.

E. A physician who submits the application for triennial renewal between August 16 and September 30 shall be assessed a cumulative late fee as provided in Paragraph (6) of Subsection A of Section 61-6-19 NMSA 1978.

F. After September 30, the board may, in its discretion, summarily suspend for nonpayment of fees the license of a physician who has failed to renew his license.

History: 1978 Comp., § 61-6-26, enacted by Laws 1989, ch. 269, § 22; 2001, ch. 96, § 8; 2003, ch. 19, § 22.

Recompilations. — Laws 1989, ch. 269, § 26 recom-piled former 61-6-26 NMSA 1978, relating to fees and other requirements for delinquent registrants, as 61-6-30 NMSA 1978, effective July 1, 1989.

The 2003 amendment, effective June 20, 2003, re-wrote Subsection A; in Subsection B, substituted "physi-cians" for "practitioners" near the beginning, deleted "all practitioners" following "NMSA 1978 and", substituted "other required documentation" for "proof of continuing medical education" at the end; in Subsection C, substi-tuted "licensed physician's" for "practitioner's" following "shall state the", substituted "license number and date" for "the date and number of his license" following "busi-ness address"; in Subsection D, substituted "licensed phy-sician" for "practitioner" near the beginning, substituted "by August 15" for "within forty-five days thereafter" fol-lowing "for triennial renewal"; substituted "physician"

for "practitioner" once in Subsections (E) and (F); in Sub-section E, substituted "August 16 and September 30" for "forty-five and ninety days of the July 1 deadline" follow-ing "triennial renewal between", substituted "Paragraph (6)" for "Paragraph (7)" preceding "of Subsection A"; in Subsection F, added "After September 30" at the begin-ning, and deleted "within ninety days of July 1" at the end.

The 2001 amendment, effective April 2, 2001, in Sub-section E, substituted "A practitioner who submits the application" for "Any practitioner who fails to submit the application", and updated the internal reference.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Pro-viders §§ 35 to 38; 73 C.J.S. Public Administrative Law and Procedure §§ 60, 100.

61-6-27. Issuance and display of renewal certificate.

The board shall issue to each licensed physician, upon application in accordance with the provisions of the Medical Practice Act and upon payment of the appropriate fees and upon docu-mentation of continuing education requirements, a certificate of triennial renewal, under the seal of the board, for the ensuing three years. The certificate of renewal shall contain the li-censed physician's name, business address, license date and number and other information as the board deems advisable. The certificate of triennial renewal shall, at all times, be displayed conspicuously in the principal office or practice location of the licensed physician to whom it has been issued.

History: 1941 Comp., § 51-2802, enacted by Laws 1945, ch. 74, § 2; 1953 Comp., § 67-5-18; Laws 1969, ch. 46, § 12; 1978 Comp., § 61-6-23, recompiled as § 61-6-27 by Laws 1989, ch. 269, § 23; 2003, ch. 19, § 23.

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-27 NMSA 1978, as amended by Laws 1961, ch. 11, § 3, relating to disposal of registration fees, effective July 1, 1989. For present comparable provisions, see 61-6-19 NMSA 1978.

The 2003 amendment, effective June 20, 2003, substi-tuted "licensed physician, upon" for "duly licensed prac-titioner, upon his" preceding "application in accordance", substituted "licensed physician's name, business address, license date and number and" for "practitioner's name, his business address, the date and number of his license to practice and such" preceding "other information as", and substituted "licensed physician" for "practitioner" near the end.

The 1989 amendment, effective July 1, 1989, renum-bered this section, which formerly was 61-6-27 NMSA 1978; substituted "renewal certificate" for "registration certificate" in the catchline; divided the former first sen-tence into the present first two sentences; in the first sentence, substituted "in accordance with the provisions of the Medical Practice Act and upon payment of the ap-propriate fees and upon documentation of continuing education requirements" for "in accordance with the pro-visions of Sections 67-5-1 through 67-5-23 NMSA 1953", "certificate of triennial renewal" for "certificate of annual registration", and "for the ensuing three years" for "for the ensuing year and ending December 31st of that year"; in the second sentence, substituted "certificate of renewal" for "certificate of registration"; in the last sentence, sub-stituted "certificate of triennial renewal" for "certificate of annual registration" and "the principal office of practice location" for "the office"; and made minor stylistic changes throughout the section.

61-6-28. Licensed physicians; changing location.

A licensed physician or practitioner under licensure authority of the board or who applies for a license issued by the board who changes the location of the physician's or practitioner's office or residence shall promptly notify the board of the change. Applicants and licensees shall maintain a current address, phone number and email address with the board.

History: 1941 Comp., § 51-2803, enacted by Laws 1945, ch. 74, § 3; 1953 Comp., § 67-5-19; Laws 1969, ch. 46, § 13; 1978 Comp., § 61-6-24, recompiled as § 61-6-28 by Laws 1989, ch. 269, § 24; 2003, ch. 19, § 24; 2021, ch. 54, § 42.

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-28 NMSA 1978, as amended by Laws 1969, ch. 46,

§ 16, relating to the penalty for failure to register, effective July 1, 1989. For present comparable provisions, see 61-6-26 NMSA 1978.

The 2021 amendment, effective June 18, 2021, re-quired applicants and licensees to maintain current con-tact information with the New Mexico medical board; and after "A licensed physician", added "or practitioner under

licensure authority of the board or who applies for a license issued by the board", and added the last sentence.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-24 NMSA 1978, and substituted "triennial renewal" for "annual registration" in both sentences and "the Medical Practice Act" for "Sections 67-5-1 through 67-5-23 NMSA 1978" in the second sentence.

61-6-29. Repealed.

Repeals. — Laws 2003, ch. 19, § 29 repealed 61-6-29 NMSA 1978, relating to publication and distribution of lists of registrants, effective June 20, 2003. For provisions

of former section, see the 2002 NMSA 1978 on *NMOne Source.com*.

61-6-30. Restoration of good standing; fees and other requirements.

A. Before restoring to good standing a license that has been in a revoked, suspended or inactive status for any cause for more than two years, the board may require the applicant to pass an oral or written examination, or both, to determine the current fitness and competence of the applicant to resume practice and may impose terms, conditions or restrictions in its discretion.

B. The authority of the board to impose terms, conditions or restrictions includes, but is not limited to, the following:

(1) requiring the applicant to obtain additional training and to pass an examination upon completion of such training; or

(2) restricting or limiting the extent, scope or type of practice of the applicant.

C. The board shall also consider the moral background and the activities of the applicant during the period of suspension or inactivity.

D. If the board in its discretion determines that the applicant is qualified to be reissued a license in good standing, the applicant shall pay to the board a reinstatement fee.

History: 1953 Comp., § 67-5-21; Laws 1969, ch. 46, § 15; 1978 Comp., § 61-6-26, recompiled as § 61-6-30 by Laws 1989, ch. 269, § 26; 2003, ch. 19, § 25; 2021, ch. 54, § 43.

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-30 NMSA 1978, as enacted by Laws 1961, ch. 130, § 2, relating to clerk of court's order of commitment establishing mental illness of licensee, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, authorized the New Mexico medical board to require an oral or written examination to determine the competency as well as current fitness of an applicant seeking restoration of the applicant's license, and authorized the board, in its discretion, to impose terms and restrictions on an applicant seeking restoration of the applicant's license; in Subsection A, after "current fitness", added "and competence", after "impose", added "terms", and after "conditions", added "or restrictions"; and in Subsection B, after "conditions", added "or restrictions".

The 2003 amendment, effective June 20, 2003, deleted "for delinquent registrants" in the section heading; in Subsection A, substituted "that" for "or certificate of registration which" following "standing a license", substituted "the

current fitness of the applicant" for "his present fitness" following "both, to determine"; in Subsection D, deleted "or certificate of registration" following "reissued a license", and substituted "shall pay to the board a reinstatement fee" for "shall also pay to the board all fees for the current and all delinquent years" at the end.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-26 NMSA 1978; in the catchline, inserted "Restoration of good standing"; in Subsection A, inserted "license or", "revoked", and "and may impose conditions in its discretion" and deleted "state medical" preceding "board"; in the introductory language of Subsection B, inserted "but is not limited to"; in Subsection D, inserted "license or" and substituted "all fees" for "the regular annual registration fee"; and made minor stylistic changes.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons, and Other Healers § 79.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 52; 73 C.J.S. Public Administrative Law and Procedure §§ 27, 28.

61-6-31. Disposition of funds; New Mexico medical board fund created; method of payments.

A. There is created the "New Mexico medical board fund".

B. All funds received by the board and money collected under the Medical Practice Act, the Physician Assistant Act [61-6-7 to 61-6-10 NMSA 1978], the Anesthesiologist Assistants Act [61-6-10.1 to 61-6-10.10 NMSA 1978], the Genetic Counseling Act [61-6A-1 to 61-6A-10 NMSA 1978], the Polysomnography Practice Act [61-6B-1 to 61-6B-10 NMSA 1978], the Impaired Health Care

Provider Act [Chapter 61, Article 7 NMSA 1978], the Naturopathic Doctors' Practice Act [61-12G-1 to 61-12G-13 NMSA 1978] and the Naprapathic Practice Act [61-12F-1 to 61-12F-11 NMSA 1978] shall be deposited with the state treasurer, who shall place the same to the credit of the New Mexico medical board fund.

C. All payments out of the fund shall be made on vouchers issued and signed by the secretary-treasurer of the board or the designee of the secretary-treasurer upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts in the New Mexico medical board fund shall be subject to the order of the board and shall be used only for the purpose of meeting necessary expenses incurred in:

(1) the performance of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act and the duties and powers imposed by those acts;

(2) the promotion of medical education and standards in this state within the budgetary limits; and

(3) efforts to recruit and retain medical and osteopathic physicians for practice in New Mexico.

E. All funds that may have accumulated to the credit of the board under any previous law shall be transferred to the New Mexico medical board fund and shall continue to be available for use by the board in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act. All money unused at the end of the fiscal year shall not revert, but shall remain in the fund for use in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act.

History: 1978 Comp., § 61-6-31, enacted by Laws 1989, ch. 269, § 27; 2003, ch. 19, § 26; 2008, ch. 53, § 13; 2008, ch. 54, § 14; 2008, ch. 55, § 2; 2011, ch. 31, § 3; 2019, ch. 244, § 17; 2021, ch. 54, § 44.

The 2021 amendment, effective June 18, 2021, authorized the New Mexico medical board to use funds from the New Mexico medical board fund to recruit and retain osteopathic physicians; and in Subsection D, Paragraph D(3), after "retain medical", deleted "doctors" and added "and osteopathic physicians".

The 2019 amendment, effective June 14, 2019, provided that all funds received by the medical board under the Naturopathic Doctors' Practice Act be deposited with the state treasurer, and that funds from the New Mexico medical board fund be used for the purpose of meeting necessary expenses incurred in the administration of the Naturopathic Doctors' Practice Act; in Subsection B, after "Impaired Health Care Provider Act," added "the Naturopathic Doctors' Practice Act"; in Subsection D, in Paragraph D(1), after "Impaired Health Care Provider Act," added "the Naturopathic Doctors' Practice Act"; and in Subsection E, after each occurrence of "Impaired Health Care Provider Act," added "the Naturopathic Doctors' Practice Act".

The 2011 amendment, effective July 1, 2011, in Subsections A, B, D and E, provided for the disposition of funds received under the Naprapathic Practice Act.

The 2008 amendment, effective May 14, 2008, added Paragraph (3) of Subsection D.

The 2003 amendment, effective June 20, 2003, substituted "New Mexico medical board" for "board of medical examiners" in the section heading and Subsections A and D; substituted "the Anesthesiologist Assistant Act and the Impaired Health Care Provider Act" for "and the Impaired Physician Act" in Subsections B and E and Paragraph (1) of Subsection D; substituted "the New Mexico medical board fund" for "the medical examiners fund" in Subsections B and E; substituted "the designee of the secretary-treasurer" for "his designee" preceding "upon warrants drawn" in Subsection C; substituted "the New Mexico medical board fund" for "the board of medical examiners fund" in Subsection D; substituted "by those acts" for "thereby" near the end of Paragraph (1) of Subsection D; deleted "medical examiners" preceding "fund for use" in Subsection E; and deleted former Subsection F relating to any employee or the secretary-treasurer shall within thirty days after election or employment execute a bond in accordance with the Surety Bond Act.

61-6-31.1. Board of medical examiners [New Mexico medical board] fund; authorized use.

Pursuant to Subsection D of Section 61-6-31 NMSA 1978, the board shall authorize expenditures from unexpended and unencumbered cash balances in the board of medical examiners [New Mexico medical board] fund to support an information technology project manager to develop,

implement and maintain a web site portal for licensure and a central database for credentialing of health care providers.

History: 1978 Comp., § 61-6-31.1, enacted by Laws 2003, ch. 235, § 6.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Effective dates. — Laws 2003, ch. 235 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

61-6-32. Termination of suspension of license for mental illness; restoration; terms and conditions.

A. A suspension under Paragraph (25) of Subsection D of Section 61-6-15 NMSA 1978 may, in the discretion of the board, be terminated, but the suspension shall continue and the board shall not restore to the former practitioner the privilege to practice medicine in this state until:

(1) the board receives competent evidence that the former practitioner is not mentally ill; and

(2) the board is satisfied, in the exercise of its discretion and with due regard for the public interest, that the practitioner's former privilege to practice medicine may be safely restored.

B. If the board, in the exercise of its discretion, determines that the practitioner's former privilege to practice medicine may be safely restored, it may restore the privilege upon whatever terms and conditions it deems advisable. If the practitioner fails, refuses or neglects to abide by the terms and conditions, the practitioner's license to practice medicine may, in the discretion of the board, be again suspended indefinitely.

History: 1953 Comp., § 67-5-26, enacted by Laws 1961, ch. 130, § 3; 1978 Comp., § 61-6-31, recompiled as § 61-6-32 by Laws 1989, ch. 269, § 28; 2021, ch. 54, § 45.

Recompilations. — Laws 1989, ch. 269, § 31 recompiled former 61-6-32 NMSA 1978, relating to termination of agency life, as 61-6-35 NMSA 1978, effective July 1, 1989.

Laws 2014, ch. 44, § 1 repealed 61-6-35 NMSA 1978 effective May 21, 2014.

The 2021 amendment, effective June 18, 2021, removed "surgery" from the provisions of the section; in Subsection A, after "practice medicine", deleted "and surgery", and in Paragraph A(2), after "privilege to practice medicine", deleted "and surgery".

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-31 NMSA 1978; added the catchline; designated the formerly undesignated introductory paragraph as Subsection A, substituting therein "under Paragraph (25) of Subsection D of Section 61-6-15 NMSA 1978" for "under Section 1 of this act"; redesignated former Subsections A and B as present Subsections A(1) and A(2), respectively, and former Subsection C as present Subsection B, deleting "and surgery" following "medicine" in both sentences therein; and made minor stylistic changes.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 52.

61-6-33. Licensure status.

Upon a verified written request, a licensee may request that the license be put in retirement, inactive or voluntary lapsed status. Upon request for reinstatement of active status, the board may impose conditions as provided in Section 61-6-30 NMSA 1978.

History: 1978 Comp., § 61-6-33, enacted by Laws 1989, ch. 269, § 29; 2001, ch. 96, § 9; 2003, ch. 19, § 27.

The 2003 amendment, effective June 20, 2003, substituted "a licensee may request that the" for "any practitioner licensed under the Medical Practice Act may request

his" near the beginning, and inserted "inactive" preceding "or voluntary lapsed".

The 2001 amendment, effective April 2, 2001, substituted "61-6-30 NMSA 1978" for "61-6-29 NMSA 1978".

61-6-34. Protected actions; communication.

A. No current or former member of the board, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, witness or any other person serving or having served the board shall bear liability or be subject to civil damages or criminal prosecutions for any action or omission undertaken or performed within the scope of the board's duties.

B. All written and oral communications made by any person to the board relating to actual and potential disciplinary action shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. All data, communications and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except to the extent necessary to carry out the board's purposes or in a judicial appeal from the board's actions.

C. No person or legal entity providing information to the board, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

History: 1978 Comp., § 61-6-34, enacted by Laws 1989, ch. 269, § 30; 1994, ch. 80, § 12.

The 1994 amendment, effective May 18, 1994, added "current or former," added language beginning with

"officer" and ending with "served the board," added "or omission," and substituted "scope of the board's duties" for "proper functions of the board" in Subsection A.

61-6-35. Repealed.

Repeals. — Laws 2014, ch. 44, § 1 repealed 61-6-35 NMSA 1978, as enacted by Laws 1979, ch. 40, § 2, relating to the delayed repeal of the Medical Practice Act, effective

May 21, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

ARTICLE 6A

Genetic Counseling Act

Sec.

61-6A-1. Short title.
61-6A-2. Findings and purpose.
61-6A-3. Definitions.
61-6A-4. License required.
61-6A-5. Exemptions.

Sec.

61-6A-6. Requirements for licensing.
61-6A-7. License renewal.
61-6A-8. Temporary license.
61-6A-9. Fees.
61-6A-10. Criminal Offender Employment Act.

61-6A-1. Short title.

Sections 1 through 10 [61-6A-1 to 61-6A-10 NMSA 1978] of this act may be cited as the "Genetic Counseling Act".

History: Laws 2008, ch. 53, § 1.

Effective dates. — Laws 2008, ch. 53, § 14 made the Genetic Counseling Act effective July 1, 2009.

61-6A-2. Findings and purpose.

A. The legislature finds that the mapping of the human genome continues to result in the rapid expansion of genetic knowledge and a proliferation of testing for genetic conditions. This has created a need for qualified professional genetic counselors to coordinate assessments, to deliver accurate information to families, to assist families in adjusting to the implications of their diagnoses and to help ensure that genetic information is used appropriately in the delivery of medical care.

B. The purpose of the Genetic Counseling Act is to protect the public from the unprofessional, improper, incompetent and unlawful practice of genetic counseling.

History: Laws 2008, ch. 53, § 2.

Effective dates. — Laws 2008, ch. 53, § 14 made the Genetic Counseling Act effective July 1, 2009.

61-6A-3. Definitions.

As used in the Genetic Counseling Act:

A. "ABGC" means the American board of genetic counseling, a national agency for certification and recertification of genetic counselors, or its successor agency;

B. "ABMG" means the American board of medical genetics, a national agency for certification and recertification of genetic counselors and geneticists with medical or other doctoral degrees, or its successor agency;

C. "board" means the New Mexico medical board;

D. "genetic counseling" means a communication process that may include:

(1) estimating the likelihood of occurrence or recurrence of any potentially inherited or genetically influenced condition or congenital abnormality. "Genetic counseling" may involve:

(a) obtaining and analyzing the complete health history of an individual and family members;

(b) reviewing pertinent medical records;

(c) evaluating the risks from exposure to possible mutagens or teratogens; and

(d) determining appropriate genetic testing or other evaluations to diagnose a condition or determine the carrier status of one or more family members;

(2) helping an individual, family or health care provider to:

(a) appreciate the medical, psychological and social implications of a disorder, including its features, variability, usual course and management options;

(b) learn how genetic factors contribute to a disorder and affect the chance for occurrence of the disorder in other family members;

(c) understand available options for coping with, preventing or reducing the chance of occurrence or recurrence of a disorder;

(d) select the most appropriate, accurate and cost-effective methods of diagnosis; and

(e) understand genetic or prenatal tests, coordinate testing for inherited disorders and interpret complex genetic test results; and

(3) facilitating an individual's or family's:

(a) exploration of the perception of risk and burden associated with a genetic disorder; and

(b) adjustment and adaptation to a disorder or the individual's or family's genetic risk by addressing needs for psychological, social and medical support; and

E. "genetic counselor" means a person licensed pursuant to the Genetic Counseling Act to engage in the practice of genetic counseling.

History: Laws 2008, ch. 53, § 3.

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

61-6A-4. License required.

Unless licensed as a genetic counselor pursuant to the Genetic Counseling Act, a person shall not:

A. engage in the practice of genetic counseling;

B. use the title or make any representation as being a licensed genetic counselor or use any other title, abbreviation, letters, figures, signs or devices that indicate or imply that the person is licensed to practice as a genetic counselor, including a genetic associate, gene counselor or genetic consultant; or

C. advertise, hold out to the public or represent in any manner that the person is authorized to practice genetic counseling.

History: Laws 2008, ch. 53, § 4.

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

61-6A-5. Exemptions.

A. Nothing in the Genetic Counseling Act is intended to limit, interfere with or prevent a licensed health care professional from practicing within the scope of the professional license of that health care professional; however, a licensed health care professional shall not advertise to the

public or any private group or business by using any title or description of services that includes the term "genetic counseling" unless the health care professional is licensed under the Genetic Counseling Act.

B. The Genetic Counseling Act shall not apply to or affect:

(1) a medical physician or an osteopathic physician licensed under the Medical Practice Act [Chapter 61, Article 6 NMSA 1978]; or

(2) a commissioned physician or surgeon serving in the armed forces of the United States or a federal agency.

History: Laws 2008, ch. 53, § 5; 2021, ch. 54, § 46.

The 2021 amendment, effective June 18, 2021, removed osteopathic physicians licensed by the board of

osteopathic medical examiners from the list of physicians to which the Genetic Counseling Act does not apply; and in Subsection B, deleted former Paragraph B(3).

61-6A-6. Requirements for licensing.

The board shall grant a license to practice genetic counseling to a person who has:

A. submitted to the board:

- (1) a completed application for licensing on the form provided by the board;
- (2) required documentation as determined by the board;
- (3) the required fees;
- (4) an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetence;
- (5) satisfactory documentation of having earned:
 - (a) a master's degree from a genetic counseling training program that is accredited by the ABGC, or an equivalent as determined by the board; or
 - (b) a doctoral degree from a medical genetics training program that is accredited by the ABMG, or an equivalent as determined by the board; and
- (6) proof that the applicant is ABGC- or ABMG-certified; and

B. complied with any other requirements of the board.

History: Laws 2008, ch. 53, § 6.

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

61-6A-7. License renewal.

A. A licensee shall renew the licensee's genetic counseling license biennially by submitting prior to the date established by the board:

- (1) the completed application for license renewal on the form provided by the board; and
- (2) the required fee for annual license renewal.

B. The board may require proof of continuing education or other proof of competence as a requirement for renewal.

C. A sixty-day grace period shall be allowed a licensee after the end of the licensing period, during which time the license may be renewed by submitting:

- (1) the completed application for license renewal on the form provided by the board;
- (2) the required fee for annual license renewal; and
- (3) the required late fee.

D. A genetic counselor's license not renewed at the end of the grace period shall be considered expired, and the licensee shall not be eligible to practice within the state. For reinstatement of an expired license within one year of the date of renewal, the board shall establish requirements or fees that are in addition to the fee for annual license renewal and may require the former licensee to reapply as a new applicant.

History: Laws 2008, ch. 53, § 7.

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

61-6A-8. Temporary license.

A. The board may issue a temporary license to an applicant who has met all licensure requirements except the examination requirement. The temporary license is valid until the results of the next scheduled examination are available and a license is issued or denied. The temporary license automatically expires if the applicant fails to take the next scheduled examination, or upon release of official examination results if the applicant fails the examination.

B. The board may issue a temporary license to a person licensed in another state or country who:

(1) is in New Mexico temporarily to teach or assist a New Mexico resident licensed to practice genetic counseling; or

(2) met the requirements for licensure in that state, which were equal to or greater than the requirements for licensure in New Mexico at the time the license was obtained in the other state.

C. The board shall not issue a temporary license to a person who qualifies for the temporary license under Subsection A of this section more than two consecutive times within the five-year period immediately following the issuance of the first temporary license.

D. A person practicing genetic counseling under a temporary license shall be supervised by a licensed genetic counselor or physician.

History: Laws 2008, ch. 53, § 8.

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

61-6A-9. Fees.

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable administrative and licensing fees, but an individual fee shall not exceed four hundred dollars (\$400).

History: Laws 2008, ch. 53, § 9; 2020, ch. 6, § 17.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military

service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

61-6A-10. Criminal Offender Employment Act.

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Genetic Counseling Act.

History: Laws 2008, ch. 53, § 10.

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

ARTICLE 6B

Polysomnography Practice Act

Sec. 61-6B-1. Short title.
61-6B-2. Definitions.
61-6B-3. License required; exceptions; practice limitations; applicability.
61-6B-4. Exemptions.
61-6B-5. Requirements for licensing.

Sec. 61-6B-6. License renewal.
61-6B-7. License; contents; display; fees.
61-6B-8. Committee; creation; organization; per diem and mileage; removal.
61-6B-9. Board; committee; powers and duties.
61-6B-10. Offenses; criminal penalties.

61-6B-1. Short title.

Sections 1 through 10 [61-6B-1 to 61-6B-10 NMSA 1978] of this act may be cited as the "Polysomnography Practice Act".

History: Laws 2008, ch. 54, § 1.

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

61-6B-2. Definitions.

As used in the Polysomnography Practice Act:

- A. "board" means the New Mexico medical board;
- B. "committee" means the polysomnography practice advisory committee;
- C. "direct supervision" means that the polysomnographic technologist providing supervision shall be present in the area where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure;
- D. "general supervision" means that the polysomnographic procedure is provided under a physician's direction and control, but the physician's presence is not required during the performance of the procedure;
- E. "license" means an authorization issued by the board that permits a person to engage in the practice of polysomnography in the state;
- F. "licensed provider" means a licensed physician, licensed physician assistant, licensed certified nurse practitioner or licensed psychologist;
- G. "licensee" means a person licensed by the board to engage in the practice of polysomnography;
- H. "polysomnographic student" means a person who is enrolled in an educational program that is accredited by the commission on accreditation of allied health education programs, as provided in Section 5 [61-6B-5 NMSA 1978] of the Polysomnography Practice Act, and who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program;
- I. "polysomnographic technician" means a person who has graduated from an accredited educational program described in Section 5 of the Polysomnography Practice Act but has not yet passed the national certifying examination given by the board of registered polysomnographic technologists, who has obtained a temporary permit from the board and who may provide sleep-related services under the general supervision of a licensed physician;
- J. "polysomnographic technologist" means a person who is credentialed by the board of registered polysomnographic technologists and is licensed by the board to engage in the practice of polysomnography under the general supervision of a licensed physician;
- K. "polysomnographic trainee" means a person who is enrolled in an accredited sleep technologist educational program that is accredited by the American academy of sleep medicine and who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program;
- L. "practice of polysomnography" means the performance of diagnostic and therapeutic tasks, under the general supervision of a licensed physician, including:
 - (1) monitoring and recording physiologic activity and data during the evaluation or treatment of sleep-related disorders, including sleep-related respiratory disturbances, by applying appropriate techniques, equipment and procedures, including:
 - (a) continuous or bi-level positive airway pressure titration on patients using a nasal or oral or a nasal and oral mask or appliance that does not extend into the trachea or attach to an artificial airway, including the fitting and selection of a mask or appliance and the selection and implementation of treatment settings;
 - (b) supplemental low-flow oxygen therapy that is less than ten liters per minute using nasal cannula or continuous or bi-level positive airway pressure during a polysomnogram;
 - (c) capnography during a polysomnogram;
 - (d) cardiopulmonary resuscitation;

- (e) pulse oximetry;
- (f) gastroesophageal pH monitoring;
- (g) esophageal pressure monitoring;
- (h) sleep staging, including surface electroencephalography, surface electrooculography and surface submental electromyography;
- (i) surface electromyography;
- (j) electrocardiography;
- (k) respiratory effort monitoring, including thoracic and abdominal movement;
- (l) respiratory plethysmography;
- (m) arterial tonometry and additional measures of autonomic nervous system tone;
- (n) snore monitoring;
- (o) audio or video monitoring;
- (p) body movement monitoring;
- (q) nocturnal penile tumescence monitoring;
- (r) nasal and oral airflow monitoring;
- (s) body temperature monitoring; and
- (t) use of additional sleep-related diagnostic technologies as determined by a rule adopted by the board;

(2) observing and monitoring physical signs and symptoms, general behavior and general physical response to polysomnographic evaluation or treatment and determining whether initiation, modification or discontinuation of a treatment regimen is warranted;

(3) analyzing and scoring data collected during the monitoring described in Paragraphs (1) and (2) of this subsection for the purpose of assisting a licensed provider in the diagnosis and treatment of sleep and wake disorders that result from developmental defects, the aging process, physical injury, disease or actual or anticipated somatic dysfunction;

(4) implementing a written or verbal order from a licensed provider that requires the practice of polysomnography;

(5) educating a patient regarding the treatment regimen that assists that patient in improving the patient's sleep; and

(6) initiating and monitoring treatment, under the orders of a licensed provider, for sleep-related breathing disorders by providing continuous positive airway pressure and bi-level positive airway pressure devices and accessories, including masks that do not extend into the trachea or attach to an artificial airway, to a patient for home use, together with educating the patient about the treatment and managing the treatment; and

M. "sleep-related services" means acts performed by polysomnographic technicians, polysomnographic trainees, polysomnographic students and other persons permitted to perform these services under the Polysomnography Practice Act, in a setting described in Subsection D of Section 4 [61-6B-4 NMSA 1978] of the Polysomnography Practice Act, that would be considered the practice of polysomnography if performed by a polysomnographic technologist.

History: Laws 2008, ch. 54, § 2. **Effective dates.** — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

61-6B-3. License required; exceptions; practice limitations; applicability.

A. On and after July 1, 2010, a person who is engaged in the practice of polysomnography must have a valid polysomnographic technologist license issued by the board. It shall be unlawful for a person to engage in the practice of polysomnography after that date unless the person has a valid polysomnographic technologist license issued by the board.

B. Prior to July 1, 2010, any person who is engaged in the practice of polysomnography without being licensed under the Polysomnography Practice Act shall not be deemed to be in violation of that act.

History: Laws 2008, ch. 54, § 3.

Effective dates. — Laws 2008, ch. 54, § 15 made the act effective July 1, 2008.

61-6B-4. Exemptions.

A. The following classes of persons may provide sleep-related services without being licensed as a polysomnographic technologist:

(1) a polysomnographic technician under the general supervision of a licensed physician for no more than two years from the date of the person's graduation from one of the accredited programs described in Section 5 [61-6B-5 NMSA 1978] of the Polysomnography Practice Act; provided that the board may grant a one-time extension of up to one year beyond the original two-year period;

(2) a polysomnographic trainee who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the trainee's educational program while actively enrolled in an accredited sleep technologist educational program that is accredited by the American academy of sleep medicine;

(3) a polysomnographic student who may provide uncompensated sleep-related services under the direct supervision of a polysomnographic technologist as a part of the student's educational program while actively enrolled in a polysomnographic educational program that is accredited by the commission on accreditation of allied health education programs; and

(4) a person, other than a respiratory care practitioner licensed under the Respiratory Care Act [Chapter 61, Article 12B NMSA 1978], credentialed in one of the health-related fields accepted by the board of registered polysomnographic technologists, who may provide sleep-related services under the direct supervision of a polysomnographic technologist for a period of up to one year while obtaining the clinical experience necessary to be eligible to take the examination given by the board of registered polysomnographic technologists.

B. Before providing any sleep-related services:

(1) a polysomnographic technician shall obtain a temporary permit from the board and when providing services shall wear a badge that appropriately identifies the person as a polysomnographic technician;

(2) a polysomnographic trainee shall give notice to the board that the trainee is enrolled in an accredited sleep technologist educational program accredited by the American academy of sleep medicine. When providing services, the trainee shall wear a badge that appropriately identifies the person as a polysomnographic trainee;

(3) a person who is obtaining clinical experience pursuant to Paragraph (4) of Subsection A of this section shall give notice to the board that the person is working under the direct supervision of a polysomnographic technologist in order to gain the experience to be eligible to take the examination given by the board of registered polysomnographic technologists. When providing services, the person shall wear a badge that appropriately identifies that the person is obtaining clinical experience; and

(4) a polysomnographic student shall wear a badge that appropriately identifies the person as a polysomnographic student.

C. A licensed dentist shall make or direct the making and use of any oral appliance used in the practice of polysomnography and shall evaluate the structures of a patient's oral and maxillofacial region for purposes of fitting the appliance.

D. The practice of polysomnography shall take place only in a hospital, a stand-alone sleep laboratory or sleep center or in a patient's home in accordance with a licensed provider's order; provided that the scoring of data and the education of patients may take place in settings other than in a hospital, sleep laboratory, sleep center or patient's home.

E. The Polysomnography Practice Act shall not apply to:

(1) a physician licensed under the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(2) diagnostic electroencephalograms conducted in accordance with the guidelines of the American clinical neurophysiology society;

(3) a person who is employed in the practice of polysomnography by a federal government facility or agency in New Mexico; or

(4) a person qualified as a member of a recognized profession, the practice of which requires a license or is regulated pursuant to the laws of New Mexico, who renders services within the scope of the person's license or other regulatory authority; provided that the person does not represent that the person is a polysomnographic technologist.

History: Laws 2008, ch. 54, § 4.

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

61-6B-5. Requirements for licensing.

A. The board shall grant a license to engage in the practice of polysomnography to a person who has submitted to the board:

- (1) a completed application for licensing on the form provided by the board;
- (2) required documentation as determined by the board;
- (3) except as provided in Section 61-1-34 NMSA 1978, the required fees;
- (4) an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetence;
- (5) satisfactory documentation of either:
 - (a) graduation from a polysomnographic educational program that is accredited by the commission on accreditation of allied health education programs;
 - (b) graduation from a respiratory care educational program that is accredited by the commission on accreditation of allied health education programs and completion of the curriculum for a polysomnography certificate established and accredited by the committee on accreditation for respiratory care of the commission on accreditation of allied health education programs;
 - (c) graduation from an electroneurodiagnostic technologist educational program with a polysomnographic technology track that is accredited by the commission on accreditation of allied health education programs; or
 - (d) successful completion of an accredited sleep technologist educational program that is accredited by the American academy of sleep medicine; provided, however, this optional requirement shall not be available after the date on which there are at least three polysomnographic technologist educational programs in New Mexico that have been accredited by the commission on accreditation of allied health education programs for at least the two years immediately preceding that date; and
- (6) satisfactory documentation of having:
 - (a) passed the national certifying examination given by the board of registered polysomnographic technologists or having passed a national certifying examination equivalent to the board of registered polysomnographic technologists' examination as determined by a rule adopted by the New Mexico medical board;
 - (b) been credentialed by the board of registered polysomnographic technologists or by another national entity equivalent to the board of polysomnographic technologists as determined by rule adopted by the New Mexico medical board;
 - (c) met any additional educational or clinical requirements established by the board pursuant to rule; and
 - (d) met all other requirements of the Polysomnography Practice Act.

B. A person who is engaged in the practice of polysomnography on July 1, 2008 shall be eligible for a license under the Polysomnography Practice Act without meeting the educational requirement of Paragraph (5) of Subsection A of this section, provided that the person meets the requirements of Paragraph (6) of Subsection A of this section.

C. The board may require:

- (1) a personal interview with an applicant to evaluate that person's qualifications for a license; and
- (2) fingerprints and other information necessary for a state and national criminal background check.

History: Laws 2008, ch. 54, § 5; 2020, ch. 6, § 18.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children,

and for certain veterans; and in Subsection A, Paragraph A(3), added "except as provided in Section 61-1-34 NMSA 1978".

61-6B-6. License renewal.

A. A licensee shall renew the licensee's polysomnographic technologist's license biennially by submitting prior to the date established by the board:

- (1) the completed application for license renewal on the form provided by the board; and
- (2) the required fee for biennial license renewal.

B. The board may require proof of continuing education or other proof of competence as a requirement for renewal.

C. A sixty-day grace period shall be allowed a licensee after the end of the licensing period, during which time the license may be renewed by submitting:

- (1) the completed application for license renewal on the form provided by the board;
- (2) the required fee for biennial license renewal; and
- (3) the required late fee.

D. A polysomnographic technologist's license not renewed at the end of the grace period shall be considered expired, and the licensee shall not be eligible to practice within the state. For reinstatement of an expired license within one year of the date of renewal, the board shall establish requirements or fees that are in addition to the fee for biennial license renewal and may require the former licensee to reapply as a new applicant.

History: Laws 2008, ch. 54, § 6.

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

61-6B-7. License; contents; display; fees.

A. A license issued by the board shall contain the name of the person to whom it is issued, the date and number of the license and other information the board may require.

B. The most recent address contained in the board's records for each licensee is the address deemed sufficient for purposes of service of process and correspondence and notice from the board. Any licensee whose address changes shall, within thirty days of the change, notify the board of the address change.

C. A licensee who wishes to retire from the practice of polysomnography shall file with the board an affidavit, in a form to be furnished by the board, stating the date on which the person retired from practice and other information the board may require. If that person wishes to reenter the practice of polysomnography, the person shall meet requirements established by the board for license renewal.

D. A licensee shall display the license in the office or place in which the licensee practices in a location clearly visible to patients.

E. Except as provided in Section 61-1-34 NMSA 1978, the board shall establish license and administrative fees, but no individual fee shall exceed five hundred dollars (\$500).

History: Laws 2008, ch. 54, § 7; 2020, ch. 6, § 19.

The 2020 amendment, effective July 1, 2020, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and

dependent children, and for certain veterans; and in Subsection E, added "Except as provided in Section 61-1-34 NMSA 1978".

61-6B-8. Committee; creation; organization; per diem and mileage; removal.

A. The "polysomnography practice advisory committee" is created to advise the board on all matters related to the Polysomnography Practice Act. The board shall provide administrative and financial support to the committee.

B. The committee shall have five members, who are residents of New Mexico, appointed by the board as follows:

(1) two members who are credentialed by the board of registered polysomnographic technologists; provided that when the New Mexico medical board begins issuing licenses, this category of committee members shall be three licensed polysomnographic technologists, with the then-sitting members in this category being given a reasonable amount of time to become licensed;

(2) one licensed physician who is certified in sleep medicine by a national certifying body recognized by the American academy of sleep medicine;

(3) one person whose background is at the discretion of the board; and

(4) one member of the public who is not economically or professionally associated with the health care field.

C. Term-length conditions for appointments to the committee are:

(1) for initial appointments, two members each for four-year, three-year and two-year terms and one member for a one-year term;

(2) for regular appointments after the initial appointments, four-year terms;

(3) for a vacancy appointment, the balance of the term; and

(4) for any one member, no more than two terms, including an initial appointment term; provided that a member shall continue to serve on the committee until a replacement is appointed.

D. The committee shall elect annually a chairperson and other officers as the committee determines to be necessary.

E. The committee shall meet at least twice per calendar year and otherwise as often as necessary to conduct business, with four members constituting a quorum and meetings subject to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

F. Members of the committee shall be reimbursed as nonsalaried public officers pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], and members shall receive no other compensation, perquisite or allowance for their service on the committee.

G. The board may remove from office a member of the committee for neglect of duties required by the Polysomnography Practice Act, malfeasance in office, incompetence or unprofessional conduct.

History: Laws 2008, ch. 54, § 8.

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

61-6B-9. Board; committee; powers and duties.

A. The board, with the advice of the committee, shall have powers regarding licensing of polysomnographic technologists, temporary permitting of polysomnographic technicians, approval of polysomnography curricula, approval of degree programs in polysomnography and any other matters that are necessary to ensure the training and licensing of competent polysomnographic technologists.

B. The board, with the advice of the committee, shall hold hearings and adopt rules regarding:

(1) the licensing of polysomnographic technologists, the practice of polysomnography and the minimum qualifications and hours of clinical experience and standards of care required for being licensed as a polysomnographic technologist;

(2) criteria for continuing education requirements;

(3) the manner in which records of examinations and treatments shall be kept and maintained;

(4) professional conduct, ethics and responsibility;

(5) disciplinary actions, including the denial, suspension or revocation of or the imposition of restrictions or conditions on a license, and the circumstances that require disciplinary action;

(6) a means to provide information to all polysomnographic technologists licensed in the state;

- (7) the inspection of the business premises of a licensee when the board determines that an inspection is necessary;
- (8) the investigation of complaints against licensees or persons holding themselves out as engaging in the practice of polysomnography in the state;
- (9) the publication of information for the public about licensees and the practice of polysomnography in the state;
- (10) an orderly process for reinstatement of a license;
- (11) criteria for acceptance of polysomnography credentials or licenses issued in other jurisdictions;
- (12) criteria for advertising or promotional materials; and
- (13) any matter necessary to implement the Polysomnography Practice Act.

History: Laws 2008, ch. 54, § 9. **Effective dates.** — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

61-6B-10. Offenses; criminal penalties.

A person who engages in the practice of polysomnography without a license is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2008, ch. 54, § 10.

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

ARTICLE 6C

Physician Assistants

Sec. 61-6C-1. Short title.

61-6C-2. Definitions.

61-6C-3. Licensure as a physician assistant; scope of practice; biennial registration of supervision; license renewal; fees.

61-6C-4. Physician assistant; inactive license.

61-6C-5. Exemption from licensure.

Sec.

61-6C-6. Physician assistant collaboration with licensed physicians; scope of practice; medical malpractice insurance.

61-6C-7. Physician assistants; rules.

61-6C-8. Supervising or collaborating licensed physician; responsibility.

61-6C-1. Short title.

Chapter 61, Article 6C NMSA 1978 may be cited as the "Physician Assistant Act".

History: 1978 Comp., § 61-6C-1, enacted by Laws 2022, ch. 39, § 29.

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

61-6C-2. Definitions.

As used in the Physician Assistant Act:

- A. "administer" means to apply a prepackaged drug directly to the body of a patient by any means;
- B. "board" means the New Mexico medical board;
- C. "dispense" means to deliver a drug directly to a patient and includes the compounding, labeling and repackaging of a drug from a bulk or original container;
- D. "distribute" means to administer or supply directly to a patient under the direct care of the distributing physician assistant one or more doses of drugs prepackaged by a licensed pharmacist and excludes the compounding or repackaging from a bulk or original container;

E. "licensed physician" means a medical or osteopathic physician; and

F. "prescribe" means to issue an order individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name of the drug prescribed, directions for use and the date of issue.

History: 1978 Comp., § 61-6-7.1, enacted by Laws 1989, ch. 9, § 2; recompiled and amended as § 61-6C-2 by Laws 2022, ch. 39, § 30.

Recompilations. — Laws 2022, ch. 39, § 30 recompiled and amended former 61-6-7.1 NMSA 1978 as 61-6C-2 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, defined "board" and "licensed physician", as used in the Physician Assistant Act; added a new Subsection B and redesignated former Subsections B and C as Subsections C and D, respectively; and added Subsection E and redesignated former Subsection D as Subsection F.

61-6C-3. Licensure as a physician assistant; scope of practice; biennial registration of supervision; license renewal; fees.

A. The board may license as a physician assistant a qualified person who has graduated from a physician assistant program accredited by the national accrediting body as established by rule of the board in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and has passed a physician assistant national certifying examination as established by rule. The board may also license as a physician assistant a person who passed the physician assistant national certifying examination administered by the national commission on certification of physician assistants prior to 1986.

B. A person shall not perform, attempt to perform or hold the person's own self out as a physician assistant without first applying for and obtaining a license from the board.

C. Physician assistants may prescribe, administer, dispense and distribute dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] pursuant to rules adopted by the board after consultation with the board of pharmacy if the prescribing, administering, dispensing and distributing are done with the supervision of a licensed physician or in collaboration with a licensed physician. The distribution process shall comply with state laws concerning prescription packaging, labeling and recordkeeping requirements.

D. A physician assistant shall perform only the acts and duties that are within the physician assistant's scope of practice.

E. An applicant for licensure as a physician assistant shall complete application forms supplied by the board and shall pay a licensing fee as provided in Section 61-6-19 NMSA 1978.

F. A physician assistant shall biennially submit proof of current certification by the national commission on certification of physician assistants or another certifying agency designated by the board and shall renew the license and registration of supervision of the physician assistant with the board.

G. A physician assistant shall not practice medicine until the physician assistant has established a supervising or collaborating relationship with a licensed physician in accordance with rules promulgated by the board.

H. Each biennial renewal of licensure shall be accompanied by a fee as provided in Section 61-6-19 NMSA 1978.

History: 1978 Comp., § 61-6C-3, enacted by Laws 2022, ch. 39, § 31.

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

61-6C-4. Physician assistant; inactive license.

A. A physician assistant license shall expire every two years on a date established by the board.

B. A physician assistant who notifies the board in writing on forms prescribed by the board may elect to place the physician assistant's license on an inactive status. A physician assistant with an inactive license shall be excused from payment of renewal fees and shall not practice as a physician assistant.

C. A physician assistant who engages in practice while the physician assistant's license is lapsed or on inactive status is practicing without a license, and this is grounds for discipline pursuant to the Physician Assistant Act and Medical Practice Act [Chapter 61, Article 6 NMSA 1978] in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

D. A physician assistant requesting restoration from inactive status shall pay the current renewal fee and fulfill the requirement for renewal pursuant to the Physician Assistant Act and the Medical Practice Act.

E. The board may, in its discretion, summarily suspend for nonpayment of fees the license of a physician assistant who has not renewed the physician assistant's license within ninety days of expiration.

F. A physician assistant who has not submitted an application for renewal on or before the license expiration date, but who has submitted an application for renewal within forty-five days after the license expiration date, shall be assessed a late fee.

G. A physician assistant who has not submitted an application for renewal between forty-six and ninety days after the expiration date shall be assessed a late fee.

History: 1978 Comp., § 61-6-7.2, enacted by Laws 1997, ch. 187, § 3; 2003, ch. 19, § 8; 2021, ch. 54, § 22; recompiled and amended as § 61-6C-4 by Laws 2022, ch. 39, § 32.

Recompilations. — Laws 2022, ch. 39, § 32 recompiled and amended former 61-6-7.2 NMSA 1978 as 61-6C-4 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, clarified that it is grounds for discipline pursuant to the Physician Assistant Act and Medical Practice Act in accordance with the Uniform Licensing Act for a physician assistant to engage in practice while the physician assistant's license is lapsed or on inactive status; in the section

heading, added "Physician assistant"; and in Subsection C, after "Medical Practice Act", added "in accordance with the Uniform Licensing Act".

The 2021 amendment, effective June 18, 2021, included the Medical Practice Act within the provisions of the section, placing physician assistant licensees under the governance of the Medical Malpractice Act; and after "Physician Assistant Act", added "and Medical Practice Act" throughout.

The 2003 amendment, effective June 20, 2003, inserted present Subsection A and redesignated former Subsections A to C as Subsections B to D; and added Subsections E to G.

61-6C-5. Exemption from licensure.

A. A physician assistant student enrolled in a physician assistant or surgeon assistant educational program accredited by the committee on allied health education and accreditation or by its successor shall be exempt from licensure while functioning as a physician assistant student.

B. A physician assistant employed by the federal government while performing duties incident to that employment is not required to be licensed as a physician assistant.

History: 1978 Comp., § 61-6-7.3, enacted by Laws 1997, ch. 187, § 4; recompiled as § 61-6C-5 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-7.3 NMSA 1978 as 61-6C-5 NMSA 1978, effective May 18, 2022.

61-6C-6. Physician assistant collaboration with licensed physicians; scope of practice; medical malpractice insurance.

A. A physician assistant may perform the acts and duties that are within the physician assistant's scope of practice in collaboration with a licensed physician, if the physician assistant has:

(1) completed three years of clinical practice as a physician assistant with the supervision of a licensed physician; and

(2) complied with rules adopted by the board establishing qualifications for when a physician assistant may engage in the practice of medicine in collaboration with a licensed physician.

B. A physician assistant practicing in collaboration with a licensed physician shall, at a minimum, maintain a policy of malpractice liability insurance that will qualify the physician assistant under the provisions of the Medical Malpractice Act [Chapter 41, Article 5 NMSA 1978].

History: Laws 2017, ch. 103, § 6; 1978 Comp., § 61-6-7.4, recompiled as § 61-6C-6 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-7.4 NMSA 1978 as 61-6C-6 NMSA 1978, effective May 18, 2022.

61-6C-7. Physician assistants; rules.

The board may promulgate in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce those rules in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for:

- A. education, skill and experience for licensure of a person as a physician assistant and providing forms and procedures for biennial license renewal;
- B. examining and evaluating an applicant for licensure as a physician assistant as to skill, knowledge and experience of the applicant in the field of medical care;
- C. establishing when and for how long physician assistants are permitted to prescribe, administer, dispense and distribute dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] pursuant to rules adopted by the board after consultation with the board of pharmacy;
- D. allowing a supervising or collaborating licensed physician to temporarily delegate supervision or collaboration responsibilities for a physician assistant to another licensed physician;
- E. establishing when a physician assistant may engage in the practice of medicine in collaboration with a licensed physician; and
- F. carrying out all other provisions of the Physician Assistant Act.

History: 1953 Comp., § 67-5-3.5, enacted by Laws 1973, ch. 361, § 5; 1978 Comp., § 61-6-8, recompiled as § 61-6-9 by Laws 1989, ch. 9, § 4; 1994, ch. 57, § 14; 1994, ch. 80, § 4; 1995, ch. 21, § 1; 1997, ch. 187, § 7; 2003, ch. 19, § 9; 2017, ch. 103, § 3; recompiled and amended as § 61-6C-7 by Laws 2022, ch. 39, § 33.

Recompilations. — Laws 2022, ch. 39, § 33 recompiled and amended former 61-6-9 NMSA 1978 as 61-6C-7 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico medical board is required to follow the provisions of the State Rules Act when promulgating rules and the provisions of the Uniform Licensing Act when enforcing those rules; and after "The board may", deleted "adopt" and added "promulgate in accordance with the State Rules Act", and after "those rules", added "in accordance with the Uniform Licensing Act".

The 2017 amendment, effective June 16, 2017, removed the provision requiring biennial registration of a physician assistant's supervising physician, allowed the medical board to adopt rules allowing a supervising or collaborating licensed physician to temporarily delegate supervision or collaboration responsibilities for a physician assistant to another licensed physician and establishing when a physician assistant may engage in the practice of medicine in collaboration with a licensed physician; in Subsection A, after "biennial", deleted "licensure and registration of supervision by a licensed physician" and added "license renewal"; in Subsection D, after "supervising", added "or collaborating", and after "delegate", deleted "supervisory" and added "supervision or collaboration"; and in Subsection E, deleted "allowing" and added "establishing when", after "physician assistant", deleted "to temporarily serve under the supervision of a licensed physician other than the supervising" and added "may engage in the practice of medicine in collaboration with a", and after "licensed physician", added "of record".

The 2003 amendment, effective June 20, 2003, deleted "and regulations" in the section heading; deleted "and regulations" at the end of the undesignated paragraph; deleted "for setting qualifications of" preceding "education, skill and experience"; added "for:" to the end

of the present undesignated paragraph; redesignated former Paragraphs A(2) to A(6) as present Subsections B to F; and deleted former Subsection B relating to no rule shall be adopted that will allow a physician's assistant to measure or perform treatment outside the physician assistant's scope of practice.

The 1997 amendment, effective July 1, 1997, in Subsection A, rewrote Paragraph (1), and substituted "licensure" for "registration" in Paragraph (2).

The 1995 amendment, effective June 16, 1995, substituted the language beginning "treatment of the human foot" for "diagnosis or medical, surgical, mechanical, manipulative and orthopedic treatment of the human foot" at the end of the final sentence of Subsection B and made stylistic changes throughout the section.

The 1994 amendment, effective May 18, 1994, designated the previously undesignated introductory paragraph as Subsection A, and the previously undesignated last paragraph as Subsection B; redesignated former Subsections A to D as Paragraphs A(1), A(2), A(3) and A(6); in Subsection A, inserted "licensed" in Paragraph (1), rewrote Paragraph (3), and inserted Paragraphs (4) and (5); and deleted "Provided, however" at the beginning of the first sentence in Subsection B. Laws 1994, ch. 57, § 14 enacted identical amendments to this section. The section was set out as amended by Laws 1994, ch. 80, § 4. See 12-1-8 NMSA 1978.

The 1989 amendment, effective March 4, 1989, renumbered this section, which formerly was 61-6-8 NMSA 1978; added "Physician assistants" at the beginning of the catchline; in Subsection A substituted "registration" for "certification" near the beginning of the subsection, and "registration" for "qualification" near the end of the subsection, and added all of the language following "employment"; in Subsection B substituted "registration" for "certificates of qualification"; added present Subsection C; redesignated former Subsection C as present Subsection D; in Subsection D, substituted "the Physician Assistant Act" for "this act"; and made minor stylistic changes throughout the section.

ANNOTATIONS

Rule disallowed which authorized delegation of dispensation of dangerous drugs. — The board of medical examiners acted outside the scope of its authority and contrary to law when it promulgated a rule allowing physicians, in certain circumstances, to delegate to physicians' assistants the task of dispensing dangerous

drugs in view of Section 61-6-16G(3) NMSA 1978 (now Section 61-6-17 NMSA 1978). *N.M. Pharm. Ass'n v. State*, 1987-NMSC-054, 106 N.M. 73, 738 P.2d 1318 (decided under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure §§ 87 to 102.

61-6C-8. Supervising or collaborating licensed physician; responsibility.

A. As a condition of licensure, all physician assistants practicing in New Mexico shall be supervised by a licensed physician. The physician assistant shall inform the board of the name of the licensed physician under whose supervision the physician assistant will practice. All supervising physicians shall be licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] and approved by the board.

B. Every licensed physician supervising a physician assistant shall be individually responsible and liable for the performance of the acts and omissions delegated to the physician assistant the physician supervises. Nothing in this section shall be construed to relieve the physician assistant of responsibility and liability for the acts and omissions of the physician assistant. Rules promulgated in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] pursuant to the Physician Assistant Act shall:

(1) require that a physician assistant whose practice is a specialty care, as defined by the board, shall be supervised by a licensed physician in accordance with requirements established by the board; and

(2) allow a physician assistant whose practice is primary care, as defined by the board, to collaborate with a licensed physician in accordance with requirements established by the board for different practice settings.

C. A physician assistant shall be supervised by or collaborate with a licensed physician in accordance with rules adopted by the board.

History: 1953 Comp., § 67-5-3.6, enacted by Laws 1973, ch. 361, § 6; 1978 Comp., § 61-6-9, recompiled as § 61-6-10 by Laws 1989, ch. 9, § 5; 1997, ch. 187, § 8; 2003, ch. 19, § 10; 2007, ch. 250, § 1; 2017, ch. 103, § 4; recompiled and amended as § 61-6C-8 by Laws 2022, ch. 39, § 34.

Recompilations. — Laws 2022, ch. 39, § 34 recompiled and amended former 61-6-10 NMSA 1978 as 61-6C-8 NMSA 1978, effective May 18, 2022.

Cross references. — For notice required upon employment of physician's assistant, see 61-14C-1 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that rules promulgated by the New Mexico medical board pursuant to the Physician Assistant Act are required to be promulgated in accordance with the State Rules Act; and in Subsection B, after "Rules promulgated", added "in accordance with the State Rules Act".

The 2017 amendment, effective June 16, 2017, required physician assistants to inform the medical board, for board-approval, of the name of the licensed physician under whose supervision the physician assistant would practice, and required that all physician assistants in specialty care be supervised, but a physician assistant whose practice is primary care could be either in a supervisory or collaborative relationship with a licensed physician; in the catchline, added "or collaborating"; in Subsection A, after "New Mexico shall", deleted "inform the board of the name of the licensed physician under whose supervision they will practice. All supervising physicians shall be licensed under the Medical Practice Act and shall be approved by the board" and added the remainder of the subsection; in Subsection B, after the second occurrence of "physician

assistant", added "the physician supervises", and added "Rules promulgated pursuant to the Physician Assistant Act shall", and added Paragraphs B(1) and B(2); and in Subsection C, after "supervised by", added "or collaborate with", and after "a physician", deleted "as approved" and added "in accordance with rules adopted".

The 2007 amendment, effective June 15, 2007, deleted the former Subsection C, limiting the number of assistants under the supervision of a licensed osteopathic physician, and added a new Subsection C.

The 2003 amendment, effective June 20, 2003, inserted "licensed" to the section heading; in Subsection A, substituted "of licensure" for "of biennial licensure and renewal of registration of supervision" near the beginning, inserted "name of the licensed" preceding "physician under whose"; in Subsection B, inserted "licensed" near the beginning, substituted "the acts and omissions of the physician assistant" for "any of his own acts and omissions" at the end; in Subsection C, substituted "A licensed physician shall not supervise" for "No physician may have under his supervision" at the beginning, and inserted "or for good cause shown" following "private charitable institutions".

The 1997 amendment, effective July 1, 1997, in Subsection A, substituted "biennial licensure and" for "registration and annual" and inserted "of supervision"; in Subsection B, deleted "using" preceding "supervising" and substituted "a licensed" for "or employing a registered"; and in Subsection C, deleted "currently registered" following "two" and substituted "that" for "which".

The 1989 amendment, effective March 4, 1989, renumbered this section, which formerly was 61-6-9 NMSA

1978; added "Supervising physician" at the beginning of the section heading; added Subsection A; designated the formerly undesignated first and second sentences as Subsection B; designated the formerly undesignated third sentence as Subsection C; and made minor stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability to patient for results of medical or surgical treatment by one not licensed as required by law, 57 A.L.R. 978.

Release of one responsible for injury as affecting liability of physician or surgeon for negligent treatment of injury, 39 A.L.R.3d 260.

Joint and several liability of physicians whose independent negligence in treatment of patient causes indivisible injury, 9 A.L.R.5th 746.

ARTICLE 6D

Anesthesiologist Assistants

Sec.	Sec.
61-6D-1. Short title.	61-6D-5. Fees.
61-6D-2. Definitions.	61-6D-6. Inactive license.
61-6D-2. Definitions. (Effective July 1, 2025.)	61-6D-7. Exemption from licensure.
61-6D-3. Licensure; registration; anesthesiologist assistant; scope of authority.	61-6D-8. Rules.
61-6D-4. Annual registration of employment; employment change.	61-6D-9. Supervising anesthesiologist; responsibilities.
	61-6D-10. Anesthesiologist assistants; employment conditions. (Repealed effective July 1, 2025.)

61-6D-1. Short title.

Chapter 61, Article 6D NMSA 1978 may be cited as the "Anesthesiologist Assistants Act".

History: Laws 2001, ch. 311, § 1; 1978 Comp., § 61-6-10.1, recompiled and amended as § 61-6D-1 by Laws 2022, ch. 39, § 35.

Recompilations. — Laws 2022, ch. 39, § 35 recompiled and amended former 61-6-10.1 NMSA 1978 as 61-6D-1 NMSA 1978, effective May 18, 2022.

Cross references. — For practice of certified registered nurse anesthetist, *see* 61-3-23.3 NMSA 1978.

The 2022 amendment, effective May 18, 2022, changed "This act" to "Chapter 61, Article 6D NMSA 1978".

61-6D-2. Definitions.

As used in the Anesthesiologist Assistants Act:

A. "anesthesiologist" means a physician licensed to practice medicine in New Mexico who has successfully completed an accredited anesthesiology graduate medical education program, who is board certified by the American board of anesthesiology or the American osteopathic board of anesthesiology or is board eligible and who has completed a residency in anesthesiology within the last three years or who has foreign certification determined by the board to be the substantial equivalent;

B. "anesthesiologist assistant" means a skilled person licensed by the board as being qualified by academic and practical training to assist an anesthesiologist in developing and implementing anesthesia care plans for patients under the supervision and direction of the anesthesiologist who is responsible for the performance of that anesthesiologist assistant;

C. "applicant" means a person who is applying to the board for a license as an anesthesiologist assistant;

D. "board" means the New Mexico medical board; and

E. "license" means an authorization to practice as an anesthesiologist assistant.

History: Laws 2001, ch. 311, § 2; 2003, ch. 19, § 11; 2003, ch. 302, § 1; 2015, ch. 52, § 1; repealed and reenacted by 2015, ch. 52, § 4; 2021, ch. 54, § 23; 2021, ch. 54, § 24; 1978 Comp., § 61-6-10.2 recompiled as § 61-6D-2 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.2 NMSA 1978 as 61-6D-2 NMSA 1978, effective May 18, 2022.

The 2021 amendment, effective June 18, 2021, revised the definition of "anesthesiologist" to include certification by the American osteopathic board of anesthesiology within the list of required qualifications; and in

Subsection A, after "American board of anesthesiology", added "or the American osteopathic board of anesthesiology".

The 2015 amendment, effective July 1, 2015, expanded the definitions of "anesthesiologist" and "anesthesiologist assistant" as used in the Anesthesiologist Assistants Act; in Subsection A, after "equivalent", deleted "and who is an employee of the department of anesthesiology

of a medical school in New Mexico"; and in Subsection B, after "person", deleted "employed or to be employed by a university in New Mexico with a medical school certified" and added "licensed".

The 2003 amendment, effective June 20, 2003, inserted "or who has foreign certification determined by the board to be the substantial equivalent" following "last three years" near the end of Subsection A.

61-6D-2. Definitions. (Effective July 1, 2025.)

As used in the Anesthesiologist Assistants Act:

A. "anesthesiologist" means a physician licensed to practice medicine in New Mexico who has successfully completed an accredited anesthesiology graduate medical education program, who is board certified by the American board of anesthesiology, the American osteopathic board of anesthesiology or is board eligible, who has completed a residency in anesthesiology within the last three years or who has foreign certification determined by the board to be the substantial equivalent and who is an employee of the department of anesthesiology of a medical school in New Mexico;

B. "anesthesiologist assistant" means a skilled person employed or to be employed by a university in New Mexico with a medical school licensed by the board as being qualified by academic and practical training to assist an anesthesiologist in developing and implementing anesthesia care plans for patients under the supervision and direction of the anesthesiologist who is responsible for the performance of that anesthesiologist assistant;

C. "applicant" means a person who is applying to the board for a license as an anesthesiologist assistant;

D. "board" means the New Mexico medical board; and

E. "license" means an authorization to practice as an anesthesiologist assistant.

History: Laws 2001, ch. 311, § 2; 2003, ch. 19, § 11; 2003, ch. 302, § 1; 2015, ch. 52, § 1; repealed and reenacted by 2015, ch. 52, § 4; 2021, ch. 54, § 24; 1978 Comp., § 61-6-10.2 recompiled as § 61-6D-2 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.2 NMSA 1978 as 61-6D-2 NMSA 1978, effective May 18, 2022.

Repeals and reenactments. — Laws 2015, ch. 52, § 4 repealed former 61-6-10.2 [61-6D-2] NMSA 1978, and enacted a new section, effective July 1, 2025.

The 2021 amendment, revised the definition of "anesthesiologist" to include certification by the American osteopathic board of anesthesiology within the list of required qualifications; and in Subsection A, after "American board of anesthesiology", added "the American osteopathic board of anesthesiology".

61-6D-3. Licensure; registration; anesthesiologist assistant; scope of authority.

A. The board may license qualified persons as anesthesiologist assistants.

B. A person shall not perform, attempt to perform or hold the person's own self out as an anesthesiologist assistant until the person is licensed by the board as an anesthesiologist assistant and has registered the anesthesiologist assistant's supervising licensed anesthesiologist in accordance with board regulations.

C. An anesthesiologist assistant may assist the supervising anesthesiologist in developing and implementing an anesthesia care plan for a patient. In providing assistance to the supervising anesthesiologist, an anesthesiologist assistant may do any of the following:

(1) obtain a comprehensive patient history and perform a physical exam and present the history and exam findings to the supervising anesthesiologist who shall conduct a pre-anesthetic interview and evaluation;

(2) pretest and calibrate anesthesia delivery systems;

(3) monitor, obtain and interpret information from anesthesia delivery systems and anesthesia monitoring equipment;

(4) assist the supervising anesthesiologist with the implementation of medically accepted monitoring techniques;

- (5) establish basic and advanced airway interventions, including intubation of the trachea and performing ventilatory support;
- (6) administer intermittent vasoactive drugs;
- (7) start and adjust vasoactive infusions;
- (8) administer anesthetic drugs, adjuvant drugs and accessory drugs;
- (9) assist the supervising anesthesiologist with the performance of epidural anesthetic procedures and spinal anesthetic procedures;
- (10) administer blood, blood products and supportive fluids;
- (11) participate in administrative activities and clinical teaching activities;
- (12) participate in research activities by performing the same procedures that may be performed under Paragraphs (1) through (10) of this subsection; and
- (13) provide assistance to cardiopulmonary resuscitation teams in response to life-threatening situations.

D. An applicant shall complete an application form provided by the board and shall submit the completed form and, except as provided in Section 61-1-34 NMSA 1978, the application fee to the board.

History: Laws 2001, ch. 311, § 3; 2003, ch. 302, § 2; 2020, ch. 6, § 14; 1978 Comp., § 61-6-10.3, recompiled as § 61-6D-3 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.3 NMSA 1978 as 61-6D-3 NMSA 1978, effective May 18, 2022.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical

amendments; in Subsection C, Paragraph C(1), after "anesthesiologist who", deleted "must" and added "shall"; and in Subsection D, after "completed form", deleted "with the" and added "and, except as provided in Section 61-1-34 NMSA 1978, the".

The 2003 amendment, effective June 20, 2003, in Paragraph C(1) inserted "and perform a physical exam" following "comprehensive patient history" and inserted "and exam findings" following "present the history".

61-6D-4. Annual registration of employment; employment change.

A. Upon becoming licensed, the board shall register the anesthesiologist assistant on the anesthesiologist assistants' roster, including his name, address and other board-required information and the anesthesiologist assistant's supervising anesthesiologist's name and address.

B. Annually, each anesthesiologist assistant shall register with the board, providing the anesthesiologist assistant's current name and address, the name and address of the supervising anesthesiologist for whom he is working and any additional information required by the board. Failure to register annually will result in the anesthesiologist assistant being required to pay a late fee or having his license placed on inactive status.

C. Every two years, each licensed anesthesiologist assistant in the state shall submit proof of completion of board-required continuing education to the board.

D. The registration of an anesthesiologist assistant shall be void upon changing his supervising anesthesiologist, until the anesthesiologist assistant registers a new supervising anesthesiologist with the board, accompanied by a change in supervision fee, in an amount to be determined by the board.

History: Laws 2001, ch. 311, § 4; 1978 Comp., § 61-6-10.4, recompiled as § 61-6D-4 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.4 NMSA 1978 as 61-6D-4 NMSA 1978, effective May 18, 2022.

61-6D-5. Fees.

Except as provided in Section 61-1-34 NMSA 1978, the following fees shall be submitted as appropriate to the board:

- A. an application fee, not to exceed one hundred fifty dollars (\$150);
- B. a license renewal fee, not to exceed one hundred dollars (\$100) paid once every two years upon application for renewal of an anesthesiologist assistant's license;

C. a late fee not to exceed twenty-five dollars (\$25.00), if the anesthesiologist assistant fails to renew the license by July 1 of the renewal year; and

D. a change in supervision fee, not to exceed fifty dollars (\$50.00), but in no case shall the change in supervision fee exceed one-half of the license renewal fee.

History: Laws 2001, ch. 311, § 5; 2020, ch. 6, § 15; 1978 Comp., § 61-6-10.5, recompiled as § 61-6D-5 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.5 NMSA 1978 as 61-6D-5 NMSA 1978, effective May 18, 2022.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

61-6D-6. Inactive license.

A. An anesthesiologist assistant who notifies the board in writing on forms prescribed by the board may elect to place the anesthesiologist assistant's license on inactive status. An anesthesiologist assistant with an inactive license shall be excused from payment of renewal fees and shall not practice as an anesthesiologist assistant.

B. An anesthesiologist assistant who engages in practice while the anesthesiologist assistant's license is lapsed or on inactive status is practicing without a license and is subject to disciplinary action pursuant to the Anesthesiologist Assistants Act and Medical Practice Act [Chapter 61, Article 6 NMSA 1978].

C. An anesthesiologist assistant requesting restoration from inactive status shall pay the current renewal fee and fulfill the requirement for renewal pursuant to the Anesthesiologist Assistants Act.

History: Laws 2001, ch. 311, § 6; 2021, ch. 54, § 25; 1978 Comp., § 61-6-10.6, recompiled as § 61-6D-6 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.6 NMSA 1978 as 61-6D-6 NMSA 1978, effective May 18, 2022.

The 2021 amendment, effective June 18, 2021, included the Medical Practice Act within the provisions of the section; and in Subsection B, after "Anesthesiologist Assistants Act", added "and Medical Practice Act".

61-6D-7. Exemption from licensure.

A. An anesthesiologist assistant student enrolled in an anesthesiologist assistant educational program accredited by the commission on accreditation of allied health education programs or its successor is exempt from licensure while functioning as an anesthesiologist assistant student; provided that the anesthesiologist assistant student is supervised by an anesthesiologist, a licensed anesthesiologist assistant or a second-year, third-year or fourth-year resident anesthesiologist.

B. An anesthesiologist assistant employed by the federal government is not required to be licensed as an anesthesiologist assistant pursuant to the Anesthesiologist Assistants Act while performing duties incident to that employment.

History: Laws 2001, ch. 311, § 7; 2013, ch. 129, § 1; 1978 Comp., § 61-6-10.7, recompiled as § 61-6D-7 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.7 NMSA 1978 as 61-6D-7 NMSA 1978, effective May 18, 2022.

The 2013 amendment, effective July 1, 2013, provided for additional supervision of anesthesiologist assistant

students; and in Subsection A, after "functioning as an anesthesiologist assistant student", deleted "If the student is providing anesthesia, the student shall be supervised on a one-to-one basis by an anesthesiologist who is continuously present in the operating room" and added the remainder of the sentence.

61-6D-8. Rules.

A. The board may adopt in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] reasonable rules:

- (1) for setting qualifications of education, skill and experience for licensure of a person as an anesthesiologist assistant;
- (2) for providing procedures and forms for licensure and annual registration;
- (3) for examining and evaluating applicants for licensure as an anesthesiologist assistant regarding the required skill, knowledge and experience in developing and implementing anesthesia care plans under supervision;
- (4) for allowing a supervising anesthesiologist to temporarily delegate supervisory responsibilities for an anesthesiologist assistant to another anesthesiologist;
- (5) for allowing an anesthesiologist assistant to temporarily serve under the supervision of an anesthesiologist other than the supervising anesthesiologist with whom the anesthesiologist assistant is registered; and
- (6) to carry out the provisions of the Anesthesiologist Assistants Act.

B. The board shall not adopt a rule allowing an anesthesiologist assistant to perform procedures outside the anesthesiologist assistant's scope of practice.

C. The board shall adopt rules:

- (1) establishing requirements for anesthesiologist assistant licensing, including:
 - (a) completion of a graduate level training program accredited by the commission on accreditation of allied health education programs;
 - (b) successful completion of a certifying examination for anesthesiologist assistants administered by the national commission for the certification of anesthesiologist assistants; and
 - (c) current certification by the American heart association in advanced cardiac life-support techniques;
- (2) establishing minimum requirements for continuing education of not less than forty hours every two years;
- (3) requiring adequate identification of the anesthesiologist assistant to patients and others;
- (4) requiring the presence, except in cases of emergency, and the documentation of the presence, of the supervising anesthesiologist in the operating room during induction of a general or regional anesthetic and during emergence from a general anesthetic, the presence of the supervising anesthesiologist within the operating suite and immediate availability to the operating room at other times when the anesthetic procedure is being performed and requiring that the anesthesiologist assistant comply with the above restrictions;
- (5) requiring the supervising anesthesiologist to ensure that all activities, functions, services and treatment measures are properly documented in written form by the anesthesiologist assistant. The anesthesia record shall be reviewed, countersigned and dated by the supervising anesthesiologist;
- (6) requiring the anesthesiologist assistant to inform the supervising anesthesiologist of serious adverse events;
- (7) establishing, with respect to practice outside of a university in New Mexico with a medical school, that the number of anesthesiologist assistants a supervising anesthesiologist may supervise at one time, except in emergency cases, shall not exceed three anesthesiologist assistants;
- (8) establishing, with respect to practice at a university in New Mexico with a medical school, that an anesthesiologist shall not supervise, except in emergency cases, more than four anesthesia providers if at least one anesthesia provider is an anesthesiologist assistant; and
- (9) within twelve months of the date on which the Anesthesiologist Assistants Act becomes effective, providing for enhanced supervision at the commencement of an anesthesiologist assistant's practice.

History: Laws 2001, ch. 311, § 9; 2003, ch. 302, § 3; 2015, ch. 52, § 2; 1978 Comp., § 61-6D-10.9, recompiled and amended as § 61-6D-8 by Laws 2022, ch. 39, § 36.

Recompilations. — Laws 2022, ch. 39, § 36 recompiled and amended former 61-6-10.9 NMSA 1978 as 61-6D-8 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico medical board is required to follow the provisions of the State Rules Act when

promulgating rules and the provisions of the Uniform Licensing Act when enforcing those rules; and in Subsection A, after "The board may adopt", added "in accordance with the State Rules Act", and after "and enforce", added "in accordance with the Uniform Licensing Act".

The 2015 amendment, effective July 1, 2015, required the New Mexico medical board to adopt and enforce additional rules relating to anesthesiologist assistants; in Subsection A, Paragraph (4), after "delegate", deleted "his"; in

Subsection C, Paragraph (7), after "establishing", added "with respect to practice outside of a university in New Mexico with a medical school, that", after "time", deleted "which number", and after "three", added "anesthesiologist assistants"; designated the last sentence in Paragraph (7) of Subsection C as Paragraph (8) of Subsection C; redesignated the succeeding paragraph accordingly; and in Subsection C, Paragraph (8), after "(8)", added

"establishing, with respect to practice at a university in New Mexico with a medical school, that".

The 2003 amendment, effective June 20, 2003, in Paragraph C(7) substituted "three" for "two" following "shall not exceed" at the end of the first sentence, and substituted "four" for "three" following "more than" near the middle of the second sentence.

61-6D-9. Supervising anesthesiologist; responsibilities.

A. Supervising anesthesiologists shall be licensed to practice pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] and shall be approved by the board.

B. The anesthesiologist actually supervising the licensed anesthesiologist assistant at the time is individually responsible and liable for the acts and omissions that the anesthesiologist assistant performs in the scope of his duties. Nothing in the Anesthesiologist Assistants Act relieves a supervising anesthesiologist of the responsibility and liability of his own acts or omissions.

C. An anesthesiologist may have that number of anesthesiologist assistants under his supervision as permitted by the board.

History: Laws 2001, ch. 311, § 10; 1978 Comp., § 61-6-10.10, recompiled as § 61-6D-9 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.10 NMSA 1978 as 61-6D-9 NMSA 1978, effective May 18, 2022.

61-6D-10. Anesthesiologist assistants; employment conditions. (Repealed effective July 1, 2025.)

An anesthesiologist assistant shall:

A. be a current or future employee of a university in New Mexico with a medical school; or

B. in a practice other than one at a university in New Mexico with a medical school:

(1) be certified as an anesthesiologist assistant by the national commission for certification of anesthesiologist assistants;

(2) practice only in a health facility licensed by the department of health where, at the time the anesthesiologist assistant begins practicing there, at least three anesthesiologists who are licensed physicians and who are board-certified as anesthesiologists by the American board of anesthesiology are on staff as employees or contractors;

(3) practice only in a class A county; and

(4) be supervised only by an anesthesiologist who is a licensed physician and who is board-certified as an anesthesiologist by the American board of anesthesiology.

History: Laws 2015, ch. 52, § 3; 2021, ch. 54, § 26; 1978 Comp., § 61-6-10.11, recompiled as § 61-6D-10 by Laws 2022, ch. 39, § 105.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.11 NMSA 1978 as 61-6D-10 NMSA 1978, effective May 18, 2022.

Delayed repeals. — Laws 2015, ch. 52, § 5 repeals Laws 2015, ch. 52, § 3 effective July 1, 2025.

The 2021 amendment, effective June 18, 2021, changed each occurrence of "medical doctor" to "licensed physician".

ARTICLE 7

Impaired Health Care Provider

Sec.

61-7-1. Short title.

61-7-2. Definition.

61-7-3. Grounds for restriction, suspension or revocation of license; registration or certification.

61-7-4. Health care provider boards; additional powers and duties.

61-7-5. Examination by committee.

61-7-6. Voluntary restriction of licensure.

Sec.

61-7-7. Report to the board; action.

61-7-8. Proceedings.

61-7-9. Reinstatement of license.

61-7-10. Judicial review.

61-7-11. Protected action and communication.

61-7-12. Impaired health care provider treatment program.

61-7-1. Short title.

Chapter 61, Article 7 NMSA 1978 may be cited as the "Impaired Health Care Provider Act".

History: 1953 Comp., § 67-42-1, enacted by Laws 1976, ch. 3, § 1; recompiled as 1953 Comp., § 67-8A-1; 1995, ch. 96, § 1.

The 1995 amendment, effective June 16, 1995, rewrote this section which read "This act may be cited as the 'Impaired Physician Act'".

ANNOTATIONS

Law reviews. — For article, "Medical Malpractice Legislation in New Mexico," see 7 N.M.L. Rev. 5 (1976-77).

61-7-2. Definition.

As used in the Impaired Health Care Provider Act, "board" means a board or department that licenses, registers or certifies health care providers.

History: 1953 Comp., § 67-42-2, enacted by Laws 1976, ch. 3, § 2; recompiled as 1953 Comp., § 67-8A-2; 1995, ch. 96, § 2; 2001, ch. 188, § 1.

The 2001 amendment, effective June 15, 2001, substituted "a board or department" for "the boards" and

"licenses, registers or certifies" for "license, register or certify".

The 1995 amendment, effective June 16, 1995, rewrote this section which read "As used in the Impaired Physician Act, 'board' means the board of medical examiners or the board of osteopathic medical examiners".

61-7-3. Grounds for restriction, suspension or revocation of license; registration or certification.

The license, registration or certification of any health care provider to practice in this state shall be subject to restriction, suspension or revocation in case of inability of the health care provider to practice with reasonable skill or safety to patients by reason of one or more of the following:

- A. mental illness;
- B. physical illness, including but not limited to deterioration through the aging process or loss of motor skill; or
- C. habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978], or alcohol.

History: 1953 Comp., § 67-42-3, enacted by Laws 1976, ch. 3, § 3; recompiled as 1953 Comp., § 67-8A-3; 1995, ch. 96, § 3.

Cross references. — For refusal, revocation or suspension of license generally, see 61-6-15 NMSA 1978.

For suspension of license for mental illness, see 61-6-32 NMSA 1978.

The 1995 amendment, effective June 16, 1995, inserted "registration or certification" in the section heading and in the introductory paragraph; substituted "health care provider" for "physician" and "licensee" throughout the section; and deleted "medicine" following "practice" in two places.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 80, 90, 100.

Validity of statute providing for revocation of license of physician or surgeon, 5 A.L.R. 94, 79 A.L.R. 323.

Liquor law, violation of, as infamous crime or offense involving moral turpitude for which physician's license may be revoked, 40 A.L.R. 1049, 71 A.L.R. 217.

Grounds for revocation of valid license of physician or surgeon, 54 A.L.R. 1504, 82 A.L.R. 1184.

Conviction as proof of ground for revocation or suspension of license of physician or surgeon where conviction as such is not an independent cause, 167 A.L.R. 228.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R. 4th 969.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 38, 39.

61-7-4. Health care provider boards; additional powers and duties.

A. If the board has reasonable cause to believe that a health care provider licensed, registered or certified to practice in this state is unable to practice with reasonable skill and safety to patients because of a condition described in Section 61-7-3 NMSA 1978, the board shall appoint

an examining committee as described in Subsection B of this section to examine the health care provider and shall, following the examination, take appropriate action within the provisions of the Impaired Health Care Provider Act.

B. The appropriate board shall designate three licensed health care providers to be members of an examining committee.

History: 1953 Comp., § 67-42-4, enacted by Laws 1976, ch. 3, § 4; recompiled as 1953 Comp., § 67-8A-4; 1991, ch. 148, § 5; 1993, ch. 326, § 1; 1995, ch. 96, § 4.

The 1995 amendment, effective June 16, 1995, substituted "Health care provider boards" for "New Mexico Board of Medical Examiners; board of osteopathic medical examiners" in the section heading; substituted "health care provider" for "physician" throughout the section; in Subsection A, inserted "registered or certified" near the beginning, deleted "medicine" following "practice" in two places, and made a minor stylistic change; in Subsection B, inserted "appropriate", and deleted a former second sentence which read "The examining committee shall include at least one psychiatrist if a question of mental illness is involved".

The 1993 amendment, effective June 18, 1993, made stylistic changes near the middle of Subsection A and rewrote the first sentence of Subsection B.

The 1991 amendment, effective June 14, 1991, added "New Mexico" at the beginning of the section heading; in Subsection A, substituted "Section 61-7-3 NMSA 1978" for "Section 3 of the Impaired Physician Act", substituted "the Impaired Physician Act" for "the Act" at the end of the Subsection and made minor stylistic changes, and rewrote Subsection B.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure §§ 49 to 86.

61-7-5. Examination by committee.

A. The examining committee assigned to examine a health care provider pursuant to referral by the board as provided in Section 61-7-4 NMSA 1978 shall conduct an examination of the health care provider for the purpose of determining the health care provider's fitness to practice with reasonable skill or safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the board. The findings and recommendations shall be based on findings by the examining committee that the health care provider examined possesses one or more of the impairments set forth in Section 61-7-3 NMSA 1978 and such impairment does, in fact, affect the ability of the health care provider to skillfully or safely practice. The examining committee shall order the health care provider to appear before it for examination and give the health care provider ten days' notice of time and place of the examination, together with a statement of the cause for examination. Notice shall be served upon the health care provider either personally or by registered or certified mail with return receipt requested.

B. If an examining committee, in its discretion, deems a mental or physical examination of the health care provider necessary to its determination of the fitness of the health care provider to practice, the committee shall order the health care provider to submit to such examination. Any person licensed, registered or certified to practice in this state shall, by so practicing or by making or filing of registration to practice in this state, be deemed to have:

(1) given consent to submit to mental or physical examination when so directed by an examining committee; and

(2) waived all objections to the admissibility of an examining committee's report to the board on the grounds of privileged communication.

C. Any health care provider ordered to an examination before an examining committee pursuant to the provisions of Subsection A of this section may present the results of an independent mental or physical examination to the committee.

D. Any health care provider who submits to a diagnostic mental or physical examination as ordered by an examining committee shall have a right to designate another health care provider to be present at the examination and make an independent report to the board.

E. Failure of a health care provider to comply with an examining committee order made pursuant to provisions of Subsection B of this section to appear before it for examination by the committee or to submit to mental or physical examination under this section shall be reported by the committee to the board and, unless due to circumstances beyond the control of the health care provider, shall be grounds for the immediate and summary suspension by the board of the health care provider's license, registration or certification to practice in this state until the further order of the board.

History: 1953 Comp., § 67-42-5, enacted by Laws 1976, ch. 3, § 5; recompiled as 1953 Comp., § 67-8A-5; 1993, ch. 326, § 2; 1995, ch. 96, § 5.

The 1995 amendment, effective June 16, 1995, substituted "health care provider" for "physician" throughout the section; deleted "medicine" following "practice" throughout the section; inserted "registered or certified" and "registration or certification" in the second sentence of Subsection B and near the end of Subsection E, respectively; and made stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "examination" for "hearing" in two places in the third sentence and made stylistic changes

throughout; in Subsection B, deleted "annual" before "registration" in the introductory language of the second sentence; designated the former last sentence of Subsection B as Subsection C and rewrote the sentence; redesignated former Subsections C and D as Subsections D and E; and substituted "examination by the committee" for "hearing" in Subsection E.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure § 60.

61-7-6. Voluntary restriction of licensure.

A health care provider may request in writing to the board a restriction of the license, registration or certification to practice. The board may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the license, registration or certification of the health care provider to practice within specified limitations and waive the commencement of any proceeding pursuant to provisions of Section 61-7-8 NMSA 1978. Removal of a voluntary restriction on licensure to practice shall be subject to the procedure for reinstatement of license, registration or certification in Section 61-7-9 NMSA 1978.

History: 1953 Comp., § 67-42-6, enacted by Laws 1976, ch. 3, § 6; recompiled as 1953 Comp., § 67-8A-6; 1993, ch. 326, § 3; 1995, ch. 96, § 6.

The 1995 amendment, effective June 16, 1995, substituted "health care provider" for "physician" in two places; inserted "registration or certification" in three places; deleted "medicine" following "practice" in two places; and made minor stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, made stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 32.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 27.

61-7-7. Report to the board; action.

A. An examining committee shall report to the board its findings on the examination of the person as provided in Section 61-7-5 NMSA 1978, the determination of the committee as to the fitness of the person to engage in practice with reasonable skill or safety to patients, either on a restricted or unrestricted basis, and any management that the committee may recommend. Recommendation by the committee shall be advisory only and shall not be binding on the board.

B. The board may accept or reject any finding, determination or recommendation of an examining committee regarding a health care provider's ability to continue to practice with or without any restriction on the license, registration or certification or may refer the matter back to an examining committee for further examination and report.

C. In the absence of a voluntary agreement by a health care provider as provided in Section 61-7-6 NMSA 1978 for restriction of the license, registration or certification of the person to practice, any person shall be entitled to a hearing under and in accordance with the procedure contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] before the board and a determination on the evidence as to whether restriction, suspension or revocation of license, registration or certification shall be imposed.

History: 1953 Comp., § 67-42-7, enacted by Laws 1976, ch. 3, § 7; recompiled as 1953 Comp., § 67-8A-7; 1993, ch. 326, § 4; 1995, ch. 96, § 7.

The 1995 amendment, effective June 16, 1995, substituted "person" for "physician" throughout the section; deleted "medicine" following "practice" in three places; substituted "health care provider" for "physician" throughout the section; inserted "registration or certification" in Subsection B and in two places in Subsection C; and made stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, made stylistic changes in Subsections A and C, and rewrote Subsection B.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure § 60.

61-7-8. Proceedings.

A. The board may formally proceed against a health care provider under the Impaired Health Care Provider Act in accordance with the procedures contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

B. At the conclusion of a hearing, the board shall make the following findings:

- (1) whether the health care provider is impaired by one of the grounds for restriction, suspension or revocation listed in Section 61-7-3 NMSA 1978;
- (2) whether the impairment, if found in Paragraph (1) of this subsection, does in fact limit the health care provider's ability to practice skillfully or safely;
- (3) to what extent the impairment limits the health care provider's ability to practice skillfully or safely and whether the board finds that the impairment is such that the health care provider's license, registration or certification should be suspended, revoked or restricted; and
- (4) if the finding in Paragraph (3) of this subsection recommends suspension or restriction of the health care provider's ability to practice, the board shall make specific recommendations as to the length and nature of the suspension or restriction and shall recommend how the suspension or restriction shall be carried out and supervised.

C. At the conclusion of a hearing, the board shall make a determination of the merits and may order one or more of the following:

- (1) placement of the health care provider on probation on such terms and conditions as it deems proper for the protection of the public;
- (2) suspension or restriction of the license of the health care provider to practice for the duration of the impairment;
- (3) revocation of the license, registration or certification of the health care provider to practice; or
- (4) reinstatement of the health care provider's license, registration or certification to practice without restriction.

D. The board may temporarily suspend the license, registration or certification of any health care provider without a hearing, simultaneously with the institution of proceedings under the Impaired Health Care Provider Act or the Uniform Licensing Act, if it finds that the evidence in support of the examining committee's determination is clear and convincing and that the health care provider's continuation in practice would constitute an imminent danger to public health and safety. The health care provider shall be entitled to a hearing to set aside the suspension no later than sixty days after the license is suspended.

E. Neither the record of the proceeding nor any order entered against a health care provider may be used against the health care provider in any other legal proceeding except upon judicial review as provided in Section 61-7-10 NMSA 1978.

History: 1953 Comp., § 67-42-8, enacted by Laws 1976, ch. 3, § 8; recompiled as 1953 Comp., § 67-8A-8; 1993, ch. 326, § 5; 1995, ch. 96, § 8.

The 1995 amendment, effective June 16, 1995, substituted "health care provider" for "physician" throughout the section; inserted "registration or certification" in four places; in Subsection D, inserted "Impaired Health Care Provider Act or the" in the first sentence and added the second sentence; and made stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, made stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 102 to 116.

Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine, 51 A.L.R.4th 1147.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 50; 73A Public Administrative Law and Procedure §§ 115 to 171.

61-7-9. Reinstatement of license.

A health care provider whose license, registration or certification has been restricted, suspended or revoked pursuant to provisions of the Impaired Health Care Provider Act, voluntarily or by action of the board, shall have a right, at reasonable intervals, to petition for

reinstatement and to demonstrate that the health care provider can resume the competent practice with reasonable skill and safety to patients. Petition shall be made in writing and on a form prescribed by the board. Action of the board on the petition shall be initiated by referral to and examination by an examining committee pursuant to the provisions of Sections 61-7-4 and 61-7-5 NMSA 1978. The board may, in its discretion and upon written recommendation of the examining committee, restore the license, registration or certification of the health care provider on a general or limited basis.

History: 1953 Comp., § 67-42-9, enacted by Laws 1976, ch. 3, § 9; recompiled as 1953 Comp., § 67-8A-9; 1993, ch. 326, § 6; 1995, ch. 96, § 9.

The 1995 amendment, effective June 16, 1995, substituted "health care provider" for "physician" throughout the section; inserted "registration or certification" in two places; and made minor stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, made stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 52.

61-7-10. Judicial review.

All orders of the board made pursuant to provisions of Subsection C of Section 61-7-8 NMSA 1978 shall be subject to judicial review as provided for in the Uniform Licensing Act [61-1-1 NMSA 1978]. The decision of the board shall not be stayed or enjoined pending review by a district court but may be stayed or enjoined pending review by the court of appeals or the New Mexico supreme court.

History: 1953 Comp., § 67-42-10, enacted by Laws 1976, ch. 3, § 10; recompiled as 1953 Comp., § 67-8A-10; 1993, ch. 326, § 7; 1995, ch. 96, § 10.

The 1995 amendment, effective June 16, 1995, in the first sentence, substituted "made pursuant to provisions of" for "under" and made a related stylistic change.

The 1993 amendment, effective June 18, 1993, made stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 117, 118.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 25, 51.

61-7-11. Protected action and communication.

There shall be no liability on the part of and no action for damages against:

A. any member of an examining committee of the board for any action undertaken or performed by such member within the scope of the functions or such committee or board under the Impaired Health Care Provider Act when acting in good faith and in the reasonable belief that the action taken is warranted; or

B. any person providing information to an examining committee or to the board in good faith in the reasonable belief that the information is accurate.

History: 1953 Comp., § 67-42-11, enacted by Laws 1976, ch. 3, § 11; recompiled as 1953 Comp., § 67-8A-11; 1993, ch. 326, § 8; 1995, ch. 96, § 11.

The 1995 amendment, effective June 16, 1995, rewrote the section which read "There shall be no liability on the part of and no action for damages against any person providing information to the committee or to the board in good faith in the reasonable belief that the information is accurate".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Officers and Employees § 301 et seq.

Malice as ground of attack on or relief from acts or regulations of public officers in exercise of discretionary powers, 57 A.L.R. 208.

73 C.J.S. Public Administrative Law and Procedure § 15.

61-7-12. Impaired health care provider treatment program.

A. The board has the authority to enter into an agreement to implement an impaired health care provider treatment program.

B. For the purposes of this section, "impaired health care provider treatment program" means a program of care and rehabilitation services provided by those organizations authorized by the board to provide for the detection, intervention and monitoring of impaired health care providers.

History: 1978 Comp., § 61-7-12, enacted by Laws 1987, ch. 204, § 2; 1995, ch. 96, § 12.

The 1995 amendment, effective June 16, 1995, substituted "health care provider" for "physician" in the section

heading and in three places in the text of the section and deleted "with a nonprofit corporation" following "agreement" in Subsection A.

ARTICLE 7A

Nutrition and Dietetics Practices

Sec.

- 61-7A-1. Short title. (Repealed effective July 1, 2028.)
- 61-7A-2. Legislative findings; purpose of act. (Repealed effective July 1, 2028.)
- 61-7A-3. Definitions. (Repealed effective July 1, 2028.)
- 61-7A-4. License required; exemptions. (Repealed effective July 1, 2028.)
- 61-7A-5. Board created. (Repealed effective July 1, 2028.)
- 61-7A-6. Board; duties. (Repealed effective July 1, 2028.)
- 61-7A-7. Licensure; requirements. (Repealed effective July 1, 2028.)
- 61-7A-8. Licensure by credentials. (Repealed effective July 1, 2028.)
- 61-7A-9. Provisional permit. (Repealed effective July 1, 2028.)

Sec.

- 61-7A-10. License renewal; continuing education requirements. (Repealed effective July 1, 2028.)
- 61-7A-11. Fees. (Repealed effective July 1, 2028.)
- 61-7A-12. Nutrition and dietetics fund created; disposition; method of payment. (Repealed effective July 1, 2028.)
- 61-7A-13. Denial, suspension, revocation and reinstatement of licenses. (Repealed effective July 1, 2028.)
- 61-7A-14. Penalty; enforcement. (Repealed effective July 1, 2028.)
- 61-7A-15. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

61-7A-1. Short title. (Repealed effective July 1, 2028.)

Sections 1 through 15 [61-7A-1 through 61-7A-15 NMSA 1978] of this act may be cited as the "Nutrition and Dietetics Practice Act".

History: Laws 1989, ch. 387, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

61-7A-2. Legislative findings; purpose of act. (Repealed effective July 1, 2028.)

A. The legislature finds that the application of scientific knowledge relating to food plays an important part in the treatment of disease and in the attainment and maintenance of health. The legislature further finds that the rendering of dietetics services in institutions and other settings requires trained and competent professionals.

B. The purpose of the Nutrition and Dietetics Practice Act is to safeguard life and health and to promote the public welfare by providing for the licensure and regulation of the persons engaged in the practice of nutrition and dietetics in the state and by providing the consumer a means of identifying those qualified to practice nutrition or dietetics.

History: Laws 1989, ch. 387, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

61-7A-3. Definitions. (Repealed effective July 1, 2028.)

As used in the Nutrition and Dietetics Practice Act:

- A. "association" means the American dietetic association;
- B. "board" means the nutrition and dietetics practice board;

C. "commission" means the commission on dietetic registration that is a member of the national commission on health certifying agencies, which national commission establishes national standards of competence for individuals participating in the health care delivery system;

D. "dietitian" means a health care professional who engages in nutrition or dietetics practice and uses the title dietitian;

E. "nutrition or dietetics practice" means the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, food management and behavioral and social sciences to achieve and maintain human health through the provision of nutrition care services;

F. "nutrition care services" means:

(1) assessment of the nutritional needs of individuals and groups and determining resources and constraints in the practice setting;

(2) establishment of priorities, goals and objectives that meet nutritional needs in a manner consistent with available resources and constraints;

(3) provision of nutrition counseling in health and disease;

(4) development, implementation and management of nutrition care systems; and

(5) evaluation, adjustment and maintenance of appropriate standards of quality in food and nutrition care;

G. "nutritional assessment" means the evaluation of the nutritional needs of individuals and groups based upon appropriate biochemical, anthropometric, physical and dietary data to determine nutrient needs and recommend appropriate nutritional intake, including enteral and parenteral nutrition;

H. "nutrition counseling" means advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutritional assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status;

I. "nutrition associate" means a health care professional who engages in nutrition or dietetics practice under the supervision of a dietitian or nutritionist; and

J. "nutritionist" means a health care professional who engages in nutrition or dietetics practice and uses the title nutritionist.

History: Laws 1989, ch. 387, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

61-7A-4. License required; exemptions. (Repealed effective July 1, 2028.)

A. After April 1, 1990, no person shall engage in nutrition or dietetics practice, or use or include the titles or represent himself to be a dietitian, nutritionist or nutrition associate unless he is licensed under the Nutrition and Dietetics Practice Act.

B. Nothing in the Nutrition and Dietetics Practice Act is intended to:

(1) limit, interfere with or prevent any other licensed health care professional from engaging in nutrition and dietetics practice within the limits of his licensure, except that he shall not hold himself out as a dietitian, nutritionist or nutrition associate;

(2) limit, interfere with or prevent employees of state or federal agencies from using the term "dietitian" or "nutritionist" as defined in state or federal personnel qualifications where these terms are used in their job titles, except that the use of these terms shall be limited to the period and practice of their employment with the state or federal agency establishing those qualifications;

(3) prevent an individual who does not hold himself out as a dietitian, nutritionist or nutrition associate from furnishing oral or written nutritional information on food, food materials or dietary supplements or from engaging in the explanation to customers about foods or food products in connection with the marketing and distribution of those products;

(4) prevent any person from providing weight control services provided the program has been reviewed by, consultation is available from and no program change can be initiated without prior approval by a licensed dietitian or licensed nutritionist, a dietitian or nutritionist licensed in

another state which has licensure requirements at least as stringent as the requirements for licensure under the Nutrition and Dietetics Practice Act, or a dietitian registered by the commission;

(5) prevent a dietetic technician registered (DTR) from engaging in nutrition or dietetics practice under the supervision of a licensed dietitian or licensed nutritionist;

(6) apply to or affect students of approved or accredited dietetics or nutrition training or education programs who engage in nutrition or dietetics practice under the supervision of a licensed dietitian or licensed nutritionist as a part of their approved or accredited training or education program for the duration of that program; or

(7) interfere with or prevent persons recognized in their communities as curanderos or medicine men from advising or ministering to people according to traditional practices, as long as they do not hold themselves out to be dietitians, nutritionists or nutrition associates.

History: Laws 1989, ch. 387, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 4, 14, 45 to 46; 39 Am. Jur. 2d Health § 25.

39A C.J.S. Health and Environment §§ 37, 47; 53 C.J.S. Licenses §§ 5, 7, 30, 37 to 40.

61-7A-5. Board created. (Repealed effective July 1, 2028.)

A. There is created the "nutrition and dietetics practice board", administratively attached to the regulation and licensing department. The board shall consist of five members who are New Mexico residents and who are appointed by the governor for staggered three-year terms. Three members shall be licensed dietitians or nutritionists with at least three years of nutrition or dietetics practice in New Mexico and two members shall represent the public. There shall be at least one dietitian and at least one nutritionist on the board at all times. The public members shall not have been licensed as a dietitian or nutritionist or have any financial interest, direct or indirect, in the professions regulated.

B. Each member shall hold office until the expiration of the term for which appointed or until a successor has been appointed. Vacancies shall be filled for the balance of the unexpired term within ninety days of the vacancy by appointment by the governor.

C. No board member shall serve more than two full terms.

D. The board shall elect annually a chairman and such other officers as it deems necessary. The board shall meet as often as necessary for the conduct of business, but no less than twice a year. Meetings shall be called by the chairman or upon the written request of two or more members of the board. Three members, at least two of whom are professional members and at least one of whom is a public member, shall constitute a quorum. Any member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member.

E. The members of the board shall be reimbursed as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 1989, ch. 387, § 5; 1996, ch. 51, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

The 1996 amendment, effective March 5, 1996, in Subsection A, substituted "five" for "seven" in the second sentence, inserted "licensed" and substituted "two" for "four" in third sentence and rewrote the fourth sentence;

deleted former Subsection B, relating to initial appointments to the board and redesignated the following subsections accordingly; and in Subsection D, substituted "two" for "three" in the third sentence, substituted "Three" for "Four" and "one" for "two" in the fourth sentence and added the last sentence.

61-7A-6. Board; duties. (Repealed effective July 1, 2028.)

A. The board shall:

- (1) develop and administer an appropriate examination for qualified applicants;
- (2) evaluate the qualifications of applicants for licensure under the Nutrition and Dietetics Practice Act;

(3) issue licenses to applicants who meet the requirements of the Nutrition and Dietetics Practice Act;

(4) investigate persons engaging in practices that may violate the provisions of the Nutrition and Dietetics Practice Act;

(5) revoke, suspend or deny a license in accordance with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978];

(6) adopt an annual budget;

(7) adopt a code of ethics; and

(8) adopt in accordance with the Uniform Licensing Act and file in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules and regulations necessary to carry out the provisions of the Nutrition and Dietetics Practice Act; provided, no rule or regulation may be adopted, amended or repealed except by a vote of three-fifths of the board members.

B. The board may contract with the regulation and licensing department for office space and administrative support.

History: Laws 1989, ch. 387, § 6; 1996, ch. 51, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

The 1996 amendment, effective March 5, 1996, in Subsection A, added Paragraph (1) and redesignated the following paragraphs accordingly, and substituted "three-fifths" for "two-thirds" in Paragraph (8).

61-7A-7. Licensure; requirements. (Repealed effective July 1, 2028.)

A. The board shall issue a license as a dietitian to any person who files a completed application, pays all required fees and certifies and furnishes evidence satisfactory to the board that the applicant has a valid current registration with the commission that gives the applicant the right to use the term "registered dietitian" or "R.D.".

B. The board shall issue a license as a nutritionist to any person who files a completed application, pays all required fees and certifies and furnishes evidence satisfactory to the board that the applicant:

(1) has received a master's degree or doctorate in human nutrition, nutrition education, foods and nutrition or public health nutrition from a college or university accredited by a member of the council on post-secondary accreditation; or

(2) maintains membership in one of the following organizations:

(a) the American institute of nutrition;

(b) the American society for clinical nutrition; or

(c) the American board of nutrition; and

(3) has successfully completed any training or educational programs and other requirements set out in the rules and regulations adopted pursuant to the Nutrition and Dietetics Practice Act.

C. Notwithstanding the provisions of Subsections A and B of this section, the board shall issue a license to an applicant who pays all required fees and who successfully passes a state examination, as established in Subsection A of Section 61-7A-6 NMSA 1978.

D. The board shall issue a license as a nutrition associate to any person who files a completed application, pays all required fees and certifies and furnishes evidence satisfactory to the board that the applicant:

(1) has received a baccalaureate or higher degree from a college or university accredited by a member of the council on post-secondary accreditation and fulfilled minimum academic requirements in the field of dietetics and related disciplines as approved by the association; and

(2) works under the supervision of a dietitian or nutritionist. Such supervision shall include a minimum of four hours onsite [on-site] supervision per month plus phone consultation as needed.

E. A valid license issued pursuant to the Nutrition and Dietetics Practice Act shall be displayed at the licensee's place of employment.

F. Licenses, including initial licenses, shall be issued for a period of one year.

History: Laws 1989, ch. 387, § 7; 1996, ch. 51, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 1996 amendment, effective March 5, 1996, re-wrote Subsection C.

61-7A-8. Licensure by credentials. (Repealed effective July 1, 2028.)

The board may license an applicant who is licensed as a dietitian, nutritionist or nutrition associate in another state, provided that in the judgment of the board the standards for licensure in that state are not less stringent than those provided for licensure in the Nutrition and Dietetics Practice Act.

History: Laws 1989, ch. 387, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

61-7A-9. Provisional permit. (Repealed effective July 1, 2028.)

A provisional permit to practice as a dietitian or nutritionist may be issued by the board upon the filing of an application and submission of evidence of successful completion of the education requirements. No fee in addition to the application and license fees shall be charged for the issuance of a provisional permit. The permit shall be valid only until the last day of the period for which it is issued or until the provisional permittee's [permittee's] application has been approved and a license issued, whichever is first.

History: Laws 1989, ch. 387, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

61-7A-10. License renewal; continuing education requirements. (Repealed effective July 1, 2028.)

A. Every person licensed under the Nutrition and Dietetics Practice Act shall renew his license annually on or before the expiration date of the initial or renewal license.

B. The board shall issue a renewal license to the licensee upon receipt of the renewal application, the renewal fee and proof satisfactory to the board of compliance with continuing education requirements.

C. Continuing education requirements for licensees shall be established by the board, provided that:

- (1) for dietitians, the requirements shall be those established by the commission; and
- (2) for nutritionists and nutrition associates, at least seventy-five clock hours, or the equivalent, during a five-year period shall be required to be obtained in increments of fifteen clock hours annually or as otherwise permitted by the board.

D. Any person who allows his license to lapse by failing to renew his license within thirty days of expiration may be reinstated by the board and issued a renewal license upon submission of a renewal application with proof satisfactory to the board of compliance with the continuing education and other requirements of the Nutrition and Dietetics Practice Act and payment of the annual renewal fee and an additional reinstatement fee.

History: Laws 1989, ch. 387, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 C.J.S. Licenses § 47.

61-7A-11. Fees. (Repealed effective July 1, 2028.)

A. Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable fees for applications, licenses and renewal of licenses. Fees shall be established based on processing requirements for each category.

B. The initial application fee shall be set in an amount not to exceed fifty dollars (\$50.00).

C. The initial license fee shall be set in an amount not to exceed one hundred fifty dollars (\$150).

D. A license renewal fee shall be established in an amount not to exceed seventy-five dollars (\$75.00) per year.

E. A license reinstatement fee shall be established in an amount not to exceed fifty dollars (\$50.00).

History: Laws 1989, ch. 387, § 11; 2020, ch. 6, § 20.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military

service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

61-7A-12. Nutrition and dietetics fund created; disposition; method of payment. (Repealed effective July 1, 2028.)

A. There is created in the state treasury the "nutrition and dietetics fund", to be administered by the department under the supervision of the board.

B. All funds received or collected by the board or the department under the Nutrition and Dietetics Practice Act shall be deposited with the state treasurer, who shall place the money to the credit of the nutrition and dietetics fund. No balance in the fund at the end of any fiscal year shall revert to the general fund.

C. Money in the nutrition and dietetics fund is appropriated to the board for the purpose of implementing and administering the provisions of the Nutrition and Dietetics Practice Act.

History: Laws 1989, ch. 387, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

61-7A-13. Denial, suspension, revocation and reinstatement of licenses. (Repealed effective July 1, 2028.)

A. The board may refuse to issue or renew or may deny, suspend or revoke any license held or applied for under the Nutrition and Dietetics Practice Act in accordance with the procedures set forth in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] upon grounds that the licensee or applicant:

(1) is guilty of fraud or misrepresentation in the procurement of any license under the Nutrition and Dietetics Practice Act;

(2) is subject to the imposition of any disciplinary action by an agency of another state which regulates dietitians, nutritionists or nutrition associates but not to exceed the period or extent of that action;

(3) is convicted of a crime other than a misdemeanor. The record of conviction or a certified copy of it shall be conclusive evidence of the conviction;

(4) is grossly negligent or incompetent in his practice as a dietitian, nutritionist or nutrition associate;

(5) has failed to fulfill continuing education requirements;

(6) has violated or aided or abetted any person to violate any of the provisions of the Nutrition and Dietetics Practice Act or any rules or regulations duly adopted under that act; or

(7) has engaged in unethical or unprofessional conduct as defined in the code of ethics adopted by the board.

B. One year from the date of revocation of a license under the Nutrition and Dietetics Practice Act, application may be made to the board for restoration of the license. The board shall provide by regulation for the criteria governing application and examination for restoration of a revoked license.

History: Laws 1989, ch. 387, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.
53 C.J.S. Licenses §§ 50 to 63.

61-7A-14. Penalty; enforcement. (Repealed effective July 1, 2028.)

A. Violation of any provision of the Nutrition and Dietetics Practice Act is a misdemeanor.

B. The department or the board may bring civil action in any district court to enforce any of the provisions of the Nutrition and Dietetics Practice Act.

History: Laws 1989, ch. 387, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-7A-15 NMSA 1978.

61-7A-15. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The nutrition and dietetics practice board is terminated on July 1, 2027 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Nutrition and Dietetics Practice Act until July 1, 2028. Effective July 1, 2028, the Nutrition and Dietetics Practice Act is repealed.

History: Laws 1989, ch. 387, § 15; 1996, ch. 51, § 4; 1997, ch. 46, § 7; 2005, ch. 208, § 5; 2015, ch. 119, § 5; 2021, ch. 50, § 3.

The 2021 amendment, effective June 18, 2021, extended the sunset date for the nutrition and dietetics practice board, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the nutrition and dietetics practice board to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences.

The 1996 amendment, effective March 5, 1996, substituted "1997" for "1995" once and "1998" for "1996" twice in the section.

ARTICLE 8

Podiatry

Sec.

61-8-1. Short title. (Repealed effective July 1, 2024.)

61-8-2. Definitions. (Repealed effective July 1, 2024.)

61-8-3. License required. (Repealed effective July 1, 2024.)

61-8-4. Persons exempted. (Repealed effective July 1, 2024.)

61-8-4.1. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)

61-8-5. Board created; members; qualifications; terms; vacancies; removal. (Repealed effective July 1, 2024.)

61-8-6. Board organization; meetings; compensation; powers and duties. (Repealed effective July 1, 2024.)

61-8-7. Disposition of funds; podiatry fund created; method of payments; bonds. (Repealed effective July 1, 2024.)

61-8-8. Qualifications for licensure as a podiatrist. (Repealed effective July 1, 2024.)

61-8-9. Expedited licensure by reciprocity. (Repealed effective July 1, 2024.)

Sec.

61-8-10. License fees; licensure under prior law; renewal. (Repealed effective July 1, 2024.)

61-8-10.1. License renewal; continuing education; penalty for failure to renew. (Repealed effective July 1, 2024.)

61-8-11. Suspension, revocation or refusal of license. (Repealed effective July 1, 2024.)

61-8-12. Offenses; penalties. (Repealed effective July 1, 2024.)

61-8-13. Unprofessional conduct; exceptions. (Repealed effective July 1, 2024.)

61-8-14. Limitation on licensure; temporary license. (Repealed effective July 1, 2024.)

61-8-15. Privileged communications. (Repealed effective July 1, 2024.)

61-8-16. Power to enjoin violations. (Repealed effective July 1, 2024.)

61-8-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

61-8-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 8 NMSA 1978 may be cited as the "Podiatry Act".

History: 1953 Comp., § 67-6-1, enacted by Laws 1977, ch. 221, § 1; 1998, ch. 24, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 1998 amendment, effective July 1, 1998, substituted "Chapter 61, Article 8 NMSA 1978" for "This act" at the beginning of the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Podiatry or chiropody statutes: validity, construction, and application, 45 A.L.R.4th 888.

61-8-2. Definitions. (Repealed effective July 1, 2024.)

As used in the Podiatry Act:

- A. "board" means the board of podiatry;
- B. "foot and ankle radiation technologist" means a person who takes x-rays of the foot and ankle under the supervision of a podiatrist; and
- C. "practice of podiatry" means engaging in that primary health care profession, the members of which examine, diagnose, treat and prevent by medical, surgical and biomechanical means ailments affecting the human foot and ankle and the structures governing their functions, but does not include amputation of the foot or the personal administration of a general anesthetic. A podiatrist, pursuant to the laws of this state, is defined as a physician and surgeon within the scope of his license.

History: 1953 Comp., § 67-6-2, enacted by Laws 1977, ch. 221, § 2; 1998, ch. 24, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 1998 amendment, effective July 1, 1998, rewrote the section to such an extent that a detailed comparison would be impracticable.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 4.
70 C.J.S. Physicians, and Surgeons, and Other Health-Care Providers § 5.

61-8-3. License required. (Repealed effective July 1, 2024.)

Unless licensed as a podiatrist pursuant to the provisions of the Podiatry Act or exempted from that act pursuant to Section 61-8-4 NMSA 1978, no person shall practice podiatry.

History: 1953 Comp., § 67-6-3, enacted by Laws 1977, ch. 221, § 3; 1998, ch. 24, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

Cross references. — For Uniform Licensing Act, see 61-1-1 NMSA 1978 et seq.

For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

For prohibition against use of fluoroscopic or X-ray machine for shoe-fitting, see 74-3-14 NMSA 1978.

The 1998 amendment, effective July 1, 1998, substituted "pursuant to the provisions of" for "under" and

inserted "or exempted from that act pursuant to Section 61-8-4 NMSA 1978" near the end of the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 43.

Practicing medicine, surgery, dentistry, optometry, podiatry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

Regulation of chiropody, 45 A.L.R.4th 888.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 12.

61-8-4. Persons exempted. (Repealed effective July 1, 2024.)

The Podiatry Act shall not apply to:

- A. gratuitous services rendered in cases of emergency;
- B. the domestic administration of family remedies not involving remuneration;
- C. medical officers of the United States service in the actual performance of their official duties. The provisions of the Podiatry Act do not conflict with existing laws regulating the practice of the healing arts in this state; and

D. the fitting, recommending or sale of corrective shoes, arch supports or similar mechanical devices by retail dealers or manufacturers, provided that the representatives, agents or employees of such dealers or manufacturers do not diagnose, treat or prescribe mechanically or otherwise for any ailment, disease or deformity of the foot or leg.

History: 1953 Comp., § 67-6-4, enacted by Laws 1977, ch. 221, § 4; 1998, ch. 24, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 1998 amendment, effective July 1, 1998, in Subsection C, deleted "nor shall" following "duties" and "shall not" following "Podiatry Act", and rewrote Subsection D.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 43.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 13.

61-8-4.1. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted under the Podiatry Act.

History: 1978 Comp., § 61-8-4.1, enacted by Laws 1986, ch. 90, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

Applicability. — Laws 1986, ch. 90, § 2 made the provisions of Laws 1986, ch. 90, § 1 applicable to applications for licensure pending or submitted after January 1, 1986.

61-8-5. Board created; members; qualifications; terms; vacancies; removal. (Repealed effective July 1, 2024.)

A. There is created a "board of podiatry". The board shall be administratively attached to the regulation and licensing department. The board shall consist of five members, three of whom shall be podiatrists licensed to practice in New Mexico who have been actively engaged in the practice of podiatry for at least three consecutive years immediately prior to their appointments and two members who shall represent the public and who shall not have been licensed as podiatrists, nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Members of the board required to be licensed podiatrists shall be appointed by the governor. Board members shall be appointed for staggered terms of five years each, made in a manner that the terms of not more than two board members end on December 31 of each year commencing with 1978. Board members shall serve until their successors have been appointed and qualified. A vacancy shall be filled for the unexpired term by appointment by the governor.

C. The governor may remove a member from the board for neglect of a duty required by law, for incompetence, for improper or unprofessional conduct as defined by board rule or for any reason that would justify the suspension or revocation of his license to practice podiatry.

D. A board member shall not serve more than two consecutive full terms, and a member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member unless excused for reasons set forth in board rules.

E. In the event of a vacancy, the secretary of the board shall immediately notify the governor and the board members of the vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member.

History: 1953 Comp., § 67-6-5, enacted by Laws 1977, ch. 221, § 5; 1979, ch. 385, § 1; 1991, ch. 189, § 11; 1998, ch. 24, § 5; 2003, ch. 408, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A; deleted "All members of the state

board of podiatry in office on the effective date of the Podiatry Act shall serve out their unexpired terms." following "appointment by the governor" at the end of Subsection B; and deleted "for any reason" following "event of a vacancy" near the beginning of Subsection E.

The 1998 amendment, effective July 1, 1998, deleted "members of the New Mexico podiatry society and" preceding "actively engaged" in Subsection A; deleted "from a list of not more than five names for each vacancy

submitted to him by the New Mexico podiatry society" following "governor" at the end of the first sentence in Subsection B; substituted "rule" for "regulation" in Subsection C; substituted "rules" for "regulations" in Subsection D; and in Subsection E, inserted "and" following "governor", and deleted "and the New Mexico podiatry society" following "board members".

The 1991 amendment, effective June 14, 1991, in Subsection A, substituted "five members" for "four members" and "appointments and two members" for "appointment and one" and made related stylistic changes in the second

sentence and made a minor stylistic change in Subsection B.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Officers and Employees §§ 11, 42, 43, 48-56, 88, 105-114, 116-118, 120-122.

73 C.J.S. Public Administrative Law and Procedure §§ 9, 13 to 14.

61-8-6. Board organization; meetings; compensation; powers and duties. (Repealed effective July 1, 2024.)

A. The board shall hold a regular meeting at least annually and shall elect annually a chair, vice chair and secretary-treasurer from its membership, each of whom shall serve until a successor is selected and qualified.

B. The board shall hold a minimum of one examination for licensure each year in the month of June or July at a place and at a time designated by the board. Notice of the examination shall be given to all applicants at least thirty days prior to the date of the examination.

C. Special meetings may be called by the chair and shall be called upon the written request of any three board members. Notice of all meetings shall be made in conformance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

D. Members of the board may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

E. The board shall:

- (1) administer and enforce the provisions of the Podiatry Act;
- (2) promulgate, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules for the implementation and enforcement of the provisions of the Podiatry Act;
- (3) adopt and use a seal;
- (4) conduct hearings, administer oaths and take testimony on matters within the board's jurisdiction;
- (5) keep an accurate record of its meetings, receipts and disbursements;
- (6) keep a record of licensure examinations held, together with the names and addresses of persons taking the examinations and the examination results. Within forty-five days after an examination, the board shall give written notice to each applicant examined of the results of the examination as to the respective applicant;
- (7) certify as passing each applicant who obtains a passing score, as defined by board rule, on examinations administered or approved by the board;
- (8) keep records of registration in which the name, address and license number of licensed podiatrists are recorded, together with a record of license renewals, suspensions and revocations;
- (9) grant, deny, renew, suspend or revoke licenses to practice podiatry or take other actions provided in Section 61-1-3 NMSA 1978 in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for any cause stated in the Podiatry Act;
- (10) promulgate rules setting standards of preliminary and professional qualifications for the practice of podiatry;
- (11) promulgate rules and prepare and administer examinations for the licensure and regulation of podiatric assistants as are necessary to protect the public. The rules shall include definitions and limitations on the practice of podiatric assistants, qualifications for applicants for licensure, an initial license fee in an amount not to exceed two hundred fifty dollars (\$250) and a renewal fee not to exceed one hundred dollars (\$100) per year, provisions for the regulation of podiatric assistants and provisions for the suspension or revocation of licenses;
- (12) determine by rule all qualifications and requirements for applicants seeking licensure as podiatrists or podiatric assistants; and
- (13) promulgate rules and prepare and administer examinations for applicants seeking licensure as foot and ankle radiation technologists.

History: 1953 Comp., § 67-6-6, enacted by Laws 1977, ch. 221, § 6; 1998, ch. 24, § 6; 2003, ch. 408, § 8; 2022, ch. 39, § 37.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, removed a provision requiring the board of podiatry to adopt, publish and file rules in accordance with the Uniform Licensing Act, leaving in place a requirement that the board promulgate rules in accordance with the State Rules Act; and in Subsection E, Paragraph E(2), deleted "adopt, publish and file" and added "promulgate", and after "in accordance with", deleted "the Uniform Licensing Act and", and in Paragraphs E(10), E(11), and E(13), deleted "adopt and".

The 2003 amendment, effective July 1, 2003, inserted "provisions for" following "podiatric assistants and" near the end of Paragraph E(11); and deleted Paragraph E(14), concerning employment of agents or attorneys.

The 1998 amendment, effective July 1, 1998, rewrote the section to such an extent that a detailed comparison would be impracticable.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Officers and Employees §§ 69, 230-265, 271-274, 378, 387, 414.

73 C.J.S. Public Administrative Law and Procedure §§ 49 to 114; 73A C.J.S. Public Administrative Law and Procedure §§ 114 to 171.

61-8-7. Disposition of funds; podiatry fund created; method of payments; bonds. (Repealed effective July 1, 2024.)

A. There is created the "podiatry fund".

B. All funds received by the board and money collected under the Podiatry Act shall be deposited with the state treasurer, who shall place the same to the credit of the podiatry fund.

C. All payments out of the podiatry fund shall be made on vouchers issued and signed by the secretary-treasurer of the board upon warrants drawn by the secretary of finance and administration in accordance with the budget approved by the department of finance and administration.

D. All amounts in the podiatry fund shall be subject to the order of the board and shall be used only for the purpose of meeting the necessary expenses incurred in:

(1) the performance of the provisions of the Podiatry Act and the powers and duties imposed by that act; and

(2) the promotion of education and standards of practice in the field of podiatry in New Mexico within the budgetary limits.

E. All money that has accumulated to the credit of the board under any previous law shall be transferred to the podiatry fund and shall continue to be available for use by the board in accordance with the provisions of the Podiatry Act. Balances at the end of the fiscal year shall not revert, but shall remain in the podiatry fund for use in accordance with the provisions of the Podiatry Act.

History: 1953 Comp., § 67-6-7, enacted by Laws 1977, ch. 221, § 7; 1998, ch. 24, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 1998 amendment, effective July 1, 1998, in Subsection C, substituted "secretary" for "department" and deleted "the state budget division of" following "approved

by"; substituted "by that act" for "thereby" in Paragraph D(1); substituted "money that has" for "funds which may have" in Subsection E; and deleted Subsections F and G, relating to the secretary treasurer and any employee who handles money or who certifies the receipt or disbursement of money, and the secretary treasurer shall make an itemized report to the governor, respectively.

61-8-8. Qualifications for licensure as a podiatrist. (Repealed effective July 1, 2024.)

A. Each applicant for licensure as a podiatrist shall furnish evidence satisfactory to the board that the applicant:

(1) has reached the age of majority;

(2) has graduated and been awarded a doctor of podiatric medicine degree from a college of podiatric medicine accredited by the American podiatric medical association council on podiatric medical education; and

(3) has completed, at a minimum, a one-year residency program at a hospital accredited by the American podiatric medical association council on education.

B. Each applicant shall file an application under oath on forms supplied by the board and shall pay the required fees.

C. An applicant for licensure by examination shall submit evidence to the board that the applicant has passed the examinations administered by the national board of podiatry examiners

for students graduating from colleges of podiatry and shall furnish the board an official transcript and take clinical and written examinations as the board deems necessary. The examinations shall be in English and the subjects covered by the examinations shall be determined by the board and taken from subjects taught in accredited colleges of podiatric medicine. No applicant for licensure by examination shall be licensed who has not received a passing score on all board-approved or board-administered examinations.

D. A podiatrist licensed in another state may, on a temporary basis, consult, advise or cooperate in patient treatment with a podiatrist licensed in New Mexico, subject to rules promulgated by the board.

History: 1953 Comp., § 67-6-8, enacted by Laws 1977, ch. 221, § 8; 1998, ch. 24, § 8; 2022, ch. 39, § 38.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

Cross references. — For age of majority, see 28-6-1 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised qualifications for licensure as a podiatrist; in Subsection A, deleted Paragraph A(2), which provided "is of good moral character", and redesignated former Paragraphs A(3) and A(4) as Paragraphs A(2) and A(3), respectively; and in Subsection D, after "subject to rules", deleted "adopted and".

The 1998 amendment, effective July 1, 1998, added the Subsection A designation, "redesignated" former

Subsections A through C as Paragraphs A(1) through A(3), rewrote Paragraph A(3), added Paragraph A(4), and added Subsections B and C.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 43, 51 to 58, 61, 132.

Practicing medicine, surgery, dentistry, optometry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

61-8-9. Expedited licensure by reciprocity. (Repealed effective July 1, 2024.)

A. An applicant for expedited licensure by reciprocity shall meet the qualifications set forth in Section 61-8-8 NMSA 1978, shall file an application under oath on forms supplied by the board that conform to board rules on reciprocity and furnish proof satisfactory to the board of having been licensed by national examination in another licensing jurisdiction. In addition, each applicant for licensure by reciprocity shall furnish the board:

(1) an affidavit from the applicant's state board showing a valid, unrestricted license and the fact that the applicant has been licensed to practice podiatry and has practiced podiatry for at least five consecutive years immediately preceding the filing of the application for reciprocal licensure and is in good standing with the other licensing jurisdiction; and

(2) pay required fees.

B. The board shall, as soon as practicable but no later than thirty days after an out-of-state licensee files an application for licensure by reciprocity, process the application and issue the license in accordance with Section 61-1-31.1 NMSA 1978.

C. The board shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and the foreign countries from which it will accept an applicant for expedited licensure. The board shall post the list of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: 1953 Comp., § 67-6-9, enacted by Laws 1977, ch. 221, § 9; 1998, ch. 24, § 9; 2022, ch. 39, § 39.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure by reciprocity, provided that the board of podiatry shall issue an expedited license to a podiatrist licensed in another licensing jurisdiction if the applicant holds a license that is current and in good standing issued by the other licensing jurisdiction, provided that the board shall expedite the

issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in

the section heading, added "Expedited"; in Subsection A, after "rules on reciprocity and", deleted "shall", after "having been licensed by", added "national", deleted "state that had qualifications equal to or exceeding those of this state on the date of his original licensure" and added "licensing jurisdiction", and after "each applicant for", deleted "registration pursuant to the provisions for", in Paragraph A(1), after "state board showing", deleted "current registration" and added "a valid, unrestricted license", and deleted "privilege. The applicant shall also complete and pass those supplemental examinations as the board deems necessary if required by the board rule" and added "licensure and is in good standing with the other licensing jurisdiction; and", and added Paragraph A(2); and added Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 1998 amendment, effective July 1, 1998, deleted "examination; licensure by" from the heading, and rewrote the text to the extent that a detailed comparison would be impracticable.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 59, 60. 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 20, 23.

61-8-10. License fees; licensure under prior law; renewal. (Repealed effective July 1, 2024.)

A. Except as provided in Section 61-1-34 NMSA 1978, an applicant for licensure as a podiatrist shall pay the following fees:

- (1) for licensure by examination:
 - (a) an examination fee equal to the cost of purchasing the examination, plus an administration fee not to exceed fifty percent of the examination fee; and
 - (b) an application fee not to exceed five hundred dollars (\$500);
- (2) for licensure on the basis of reciprocity, a fee set by the board in an amount not to exceed six hundred dollars (\$600);
- (3) for the annual renewal of license on or before January 1 of each year, a renewal fee set by the board in an amount not to exceed three hundred dollars (\$300);
- (4) for the late renewal after January 1 of each year, a late charge not to exceed fifty dollars (\$50.00) per month or part thereof commencing on January 2;
- (5) in addition to the renewal fees and late charges, the applicant for the renewal of a license shall pay a reinstatement fee not to exceed two hundred fifty dollars (\$250) for the first twelve months of delinquency and a reinstatement fee of five hundred dollars (\$500) for a license that has lapsed more than one year but not more than three years; and
- (6) for the issuance of a temporary license, a fee not to exceed one hundred dollars (\$100).

B. If any licensee permits the licensee's license to lapse for a period of three full years, the license shall automatically be canceled and shall not be reinstated.

C. The provisions of Paragraphs (3), (4) and (5) of Subsection A of this section shall not apply to licensees who practice in the service of the United States whose licenses shall be renewed upon application for renewal within three months after the termination of service.

D. Current renewal certificates issued by the board shall be displayed in the office of the licensee, and, in the case of the suspension or revocation of a license, no portion of a fee or penalty shall be returned.

History: 1953 Comp., § 67-6-10, enacted by Laws 1977, ch. 221, § 10; 1979, ch. 385, § 3; 1989, ch. 185, § 1; 1998, ch. 24, § 10; 2020, ch. 6, § 21.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, removed a provision related to licensing under prior laws of New Mexico, and made certain technical amendments; in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978"; and deleted former Subsection E, which related to persons licensed as a podiatrist under the provisions of any prior laws of New Mexico.

The 1998 amendment, effective July 1, 1998, rewrote Subsection A; substituted "Paragraphs (3), (4) and (5)" for "Paragraphs (4), (5) and (6)" in Subsection C; and deleted "biennial" preceding "renewal" and "as provided in that law" following "current license" in Subsection E.

The 1989 amendment, effective April 3, 1989, substituted "five hundred dollars (\$500)" for "one hundred twenty-five (\$125)" in Subsection A(1); substituted "five hundred dollars (\$500)" for "two hundred fifty dollars (\$250)" in Subsection A(2); substituted "twenty-five dollars (\$25.00)" for "fifteen dollars (\$15.00)" in Subsection A(3); in Subsection A(4), substituted "annual" for "biannual", deleted "even-numbered" preceding "year", and substituted "two hundred dollars (\$200)" for "one hundred dollars (\$100)"; in Subsection A(5), substituted "January 1

of each year" for "December 31 of each odd-numbered year", substituted "charge not to exceed fifty dollars (\$50.00)" for "charge of five dollars (\$5.00)", and substituted "January 2" for "January 1 of the even-numbered year"; in Subsection A(6), substituted "fee not to exceed two hundred fifty dollars (\$250)" for "fee of twenty-five dollars (\$25.00)" and "fee of five hundred dollars (\$500)" for "fee of one hundred dollars (\$100)"; added Subsection A(7); substituted "current license" for "present license" in

Subsection E; and deleted former Subsection F, relating to continuing education and post-graduate study requirements.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 22, 26.

61-8-10.1. License renewal; continuing education; penalty for failure to renew. (Repealed effective July 1, 2024.)

A. All licensees shall renew their licenses on or before January 1 of each year. Upon application for renewal, each licensee shall furnish evidence that he holds a registration number with the taxation and revenue department and has completed continuing education requirements as set forth in Subsection B of this section.

B. As a condition of renewal, all applicants shall furnish the board with evidence of completion of post-graduate study as required by board rule. Post-graduate study may be obtained from a college of podiatric medicine accredited by the American podiatry association, one of its constituent societies or affiliate organizations or other such courses approved by the board. This requirement may only be waived for reasons of prolonged illness or other incapacity.

C. The board may summarily suspend the license of any podiatrist who fails to renew his license or submit proof of completion of continuing education requirements within sixty days of January 1 as provided in Subsection A of this section. The board may reinstate licenses suspended upon payment of all applicable late fees, delinquent renewal fees and reinstatement fees.

History: 1978 Comp., § 61-8-10.1, enacted by Laws 1989, ch. 185, § 2; 1998, ch. 24, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 1998 amendment, effective July 1, 1998, substituted "shall" for "must" and "rule" for "regulation" in Subsection B.

61-8-11. Suspension, revocation or refusal of license. (Repealed effective July 1, 2024.)

The board may refuse to issue or may suspend or revoke any license in accordance with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] for any one or more of the following reasons:

A. making a false statement in any part of an application for licensure, examination or registration pursuant to the provisions of the Podiatry Act;

B. conviction of a crime involving moral turpitude, as shown by a certified copy of the record of the court of conviction;

C. the habitual indulgence in the use of narcotics, alcohol or other substances that impair intellect and judgment to an extent as will, in the opinion of the board, incapacitate a podiatrist from the proper performance of his professional duties;

D. lending the use of one's name to an unlicensed podiatrist;

E. selling, giving or prescribing any compound or substance containing narcotic drugs or other controlled substances for illegal purposes;

F. the willful violation of a patient's right to confidentiality;

G. gross malpractice or incompetency as defined by board rule; or

H. any dishonest or unprofessional conduct as defined by the Podiatry Act or rules adopted pursuant to that act.

History: 1953 Comp., § 67-6-11, enacted by Laws 1977, ch. 221, § 11; 1998, ch. 24, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 1998 amendment, effective July 1, 1998, deleted "or take other action specified in Section 61-1-3 NMSA 1978" following "license" in the introductory language; in Subsection A, substituted "part of" for "affidavit required for" and "pursuant to" for "under"; in Subsection C, substituted "alcohol" for "ardent spirits, stimulants" and "that" for "which"; substituted "violation of a patient's right to confidentiality" for "betrayal of a professional confidence" in Subsection F; deleted former Subsections G and H, relating to soliciting the public, and use of advertising; redesignated Subsections I and J as G and H, substituted "rule" for "regulation" in Subsection G; and substituted "the Podiatry Act or rules adopted pursuant to that act" for "regulation of the board" in Subsection H.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

Practicing medicine, surgery, dentistry, optometry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 A.L.R.4th 248.

Podiatry or chiropody statutes: validity, construction, and application, 45 A.L.R.4th 888.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 38 to 42, 53 to 57.

61-8-12. Offenses; penalties. (Repealed effective July 1, 2024.)

Each of the following acts committed by any person constitutes a misdemeanor punishable upon conviction by a fine of not less than one hundred dollars (\$100) or more than ten thousand dollars (\$10,000) or by imprisonment not to exceed one year, or both:

A. practicing or attempting to practice podiatry without a current valid license issued by the board;

B. obtaining registration under the Podiatry Act by false or untrue statements to the board or by presenting a fraudulent diploma or license to the board;

C. swearing falsely or giving a false affidavit in any proceeding before the board;

D. advertising or using any designation, diploma or certificate tending to imply that one is a practitioner of podiatry, including the use of the words "chiropracist", "podiatrist", "M.Cp.", "D.S.C.", "D.P.M.", "foot specialist", "foot correctionist", "foot culturist", "foot practipedist", "foot doctor" or words of similar import, unless one holds a license or is exempted under the provisions of the Podiatry Act; or

E. practicing podiatry during any period of time in which one's license has been revoked or suspended as provided in the Podiatry Act.

History: 1953 Comp., § 67-6-12, enacted by Laws 1977, ch. 221, § 12; 1998, ch. 24, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 1998 amendment, effective July 1, 1998, substituted "or" for "nor" and "ten thousand dollars (\$10,000)" for "two hundred dollars (\$200)" in the introductory language, and substituted "doctor" for "treatments" in Subsection D.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 130.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28, 33.

61-8-13. Unprofessional conduct; exceptions. (Repealed effective July 1, 2024.)

A. Unprofessional conduct pursuant to Subsection H of Section 61-8-11 NMSA 1978 for any podiatrist licensed under the Podiatry Act includes using any false or misleading advertising or making any false or misleading statement in communications with patients or potential patients or using any misleading or deceptive title or designation in a name or title of a podiatric practice.

B. Nothing in Subsection A of this section shall be construed to prohibit the following acts:

(1) publishing in type of ordinary size and style, as opposed to bold or display type, the name, location, office hours and telephone number of any licensed practicing podiatrist in any telephone directory;

(2) publishing for a period of not more than ten consecutive days an announcement that the practitioner is opening a new office or practice, providing that the announcement shall be

published within thirty days after the opening and shall state only the practitioner's name, location, office hours, telephone number, occupation and the fact of the opening and shall be of a size not to exceed two inches in length and four inches in width and of a type size not heavier nor larger than twelve point gothic with a border not larger than four points;

(3) mailing one notice of the opening of a new practice or a notice of the assumption of an established practice consisting of a printed announcement which shall be in an envelope and shall state only the practitioner's name, location, telephone number, office hours and the designation "podiatrist", "foot specialist" or "practice limited to care of feet" and the usual language announcing the opening of an office;

(4) maintaining exterior signs about the office of the practitioner, in keeping with the medical and dental community, giving his name, address and occupation. The letters shall be no larger than six inches in height, but neon lights, flashing lights or similar devices shall not be used; and

(5) conducting, in conjunction with a majority of the practicing podiatrists of the state or of a given city, a public educational program or informational campaign.

History: 1953 Comp., § 67-6-13, enacted by Laws 1977, ch. 221, § 13; 1998, ch. 24, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

Cross references. — For incorporation of podiatrists under the Professional Corporation Act, see 53-6-1 NMSA 1978 et seq.

The 1998 amendment, effective July 1, 1998, re-wrote Subsection A; in Paragraph B(2), substituted "the" for "such" and deleted "his" preceding "occupation"; and deleted "provided that such program or campaign is approved and endorsed by the state society and done in the name of the society" at the end of Paragraph B(5).

ANNOTATIONS

Listing of association. — A listing in a telephone book of an association to practice podiatry was not advertising and did not violate former podiatry act. 1973 Op. Att'y Gen. No. 73-04.

Podiatrist may not advertise in telephone book as a "foot clinic". 1968 Op. Att'y Gen. No. 68-45.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 87, 89, 141 to 143.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 39, 53 to 57.

61-8-14. Limitation on licensure; temporary license. (Repealed effective July 1, 2024.)

A. No license to practice podiatry shall be issued to a corporation, partnership or association; provided, however, that this subsection shall not prohibit licensed podiatrists from associating themselves as otherwise allowed by law in a professional corporation, professional limited liability company, partnership or association for the purpose of practicing podiatry.

B. In cases of emergency, as defined by board rule, the board may grant a temporary license to practice podiatry to a person who meets the requirements of Subsections A and B of Section 61-8-8 NMSA 1978. The temporary license shall automatically expire on the date of the next board meeting at which applications for licensure by examination or reciprocity are approved. No person may be issued more than one temporary license pursuant to this provision.

C. To facilitate educational programs, subject to conditions and terms set forth in board rules, the board may grant a temporary license to practice podiatry to a person enrolled and participating in such program.

History: 1953 Comp., § 67-6-14, enacted by Laws 1977, ch. 221, § 14; 1998, ch. 24, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

The 1998 amendment, effective July 1, 1998, in Subsection A, inserted "as otherwise allowed by law" and "professional limited liability company"; in Subsection B, substituted "61-8-8 NMSA 1978" for "67-6-8 NMSA 1953", deleted "state" following "next", inserted "meeting at which licenses by" preceding "examination", and

substituted "are approved" for "for licensure" and "emergency" for "temporary"; and added Subsection C.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 53, 54, 150 to 152.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 26, 27.

61-8-15. Privileged communications. (Repealed effective July 1, 2024.)

Medical and other health care-related information concerning a patient obtained by a podiatrist or by an employee of a podiatrist during the course of examination, diagnosis or treatment; and

advice, diagnosis, orders, prescriptions and other health care-related communications from a podiatrist or an employee of a podiatrist are confidential communications protected in courts of law and administrative proceedings by the physician-patient privilege.

History: 1978 Comp., § 61-8-15, enacted by Laws 1998, ch. 24, § 16.

Repeals and reenactments. — Laws 1998, ch. 24, § 16 repealed 61-8-15 NMSA 1978, as enacted by Laws 1977, ch. 221, § 15, and enacted a new section, effective July 1, 1998.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 169, 170, 172.

61-8-16. Power to enjoin violations. (Repealed effective July 1, 2024.)

Upon final determination that a person has violated a provision of the Podiatry Act, the board or any interested person may, in addition to other remedies provided in that act, petition the district court for an order restraining and enjoining such person from further or continued violation of the Podiatry Act.

History: 1953 Comp., § 67-6-16, enacted by Laws 1977, ch. 221, § 16; 1998, ch. 24, § 17.

Delayed repeals. — For delayed repeal of this section, see 61-8-17 NMSA 1978.

Cross references. — For injunctions, see Rules 1-065 and 1-066 NMRA.

The 1998 amendment, effective July 1, 1998, substituted "final determination that a" for "conviction of any", "has violated a" for "for violation of any", and "other

remedies" for "the penalty herein"; inserted "in that act" near the middle of the section; and deleted "and the order may be enforced by contempt proceedings" at the end of the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 122, 123; 42 Am. Jur. 2d Injunctions § 127.

61-8-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The board of podiatry is terminated on July 1, 2023 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Podiatry Act until July 1, 2024. Effective July 1, 2024, the Podiatry Act is repealed.

History: 1978 Comp., § 61-8-17, enacted by Laws 1979, ch. 385, § 2; 1981, ch. 241, § 21; 1985, ch. 87, § 6; 1991, ch. 189, § 12; 1997, ch. 46, § 8; 2003, ch. 428, § 6; 2009, ch. 96, § 5; 2015, ch. 119, § 6.

The 2015 amendment, effective June 19, 2015, extended the termination date for the board of podiatry to July 1, 2023, and the repeal date to July 1, 2024.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, substituted "the Podiatry Act" for "Chapter 61, Article 8 NMSA

1978" throughout the section, and in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004".

The 1997 amendment, effective June 20, 1997, substituted "2003" for "1997", substituted "2004" for "1998", and substituted "July 1, 2004, Chapter 61, Article 8 NMSA 1978" for "July 1, 1998 Article 8 of Chapter 61, NMSA 1978".

The 1991 amendment, effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

ARTICLE 9

Psychologists

Sec. 61-9-1. Short title. (Repealed effective July 1, 2028.)

61-9-2. Repealed.

61-9-3. Definitions. (Repealed effective July 1, 2028.)

61-9-4. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)

61-9-4.1. License required. (Repealed effective July 1, 2028.)

61-9-5. State board of examiners; psychology fund. (Repealed effective July 1, 2028.)

Sec. 61-9-5.1.

Actions of board; immunity; certain records not public records. (Repealed effective July 1, 2028.)

61-9-6. Board; meeting; powers. (Repealed effective July 1, 2028.)

61-9-7. Fees; license renewal. (Repealed effective July 1, 2028.)

61-9-8. Records. (Repealed effective July 1, 2028.)

- Sec. 61-9-9. Licensure of psychologists without examination. (Repealed effective July 1, 2028.)
- 61-9-10. Licensure of psychologists from other areas; expedited licensure.
- 61-9-10.1. Provisional and temporary licensure. (Repealed effective July 1, 2028.)
- 61-9-11.1. Psychologist associates; licensure; examination. (Repealed effective July 1, 2028.)
- 61-9-11.2. Criminal background checks. (Repealed effective July 1, 2028.)
- 61-9-12. License. (Repealed effective July 1, 2028.)
- 61-9-13. Denial, revocation or suspension of license. (Repealed effective July 1, 2028.)
- 61-9-14. Violation and penalties. (Repealed effective July 1, 2028.)
- 61-9-15. Injunctive proceedings. (Repealed effective July 1, 2028.)
- Sec. 61-9-16. Scope of act. (Repealed effective July 1, 2028.)
- 61-9-17. Drugs; medicines. (Repealed effective July 1, 2028.)
- 61-9-17.1. Conditional prescription certificate; prescription certificate; application; requirements; rulemaking by board; issuance, denial, renewal and revocation of certification. (Repealed effective July 1, 2028.)
- 61-9-17.2. Prescribing practices. (Repealed effective July 1, 2028.)
- 61-9-17.3. Prescription monitoring program; board to promulgate rules. (Repealed effective July 1, 2028.)
- 61-9-18. Privileged communications. (Repealed effective July 1, 2028.)
- 61-9-19. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

61-9-1. Short title. (Repealed effective July 1, 2028.)

Chapter 61, Article 9 NMSA 1978 may be cited as the "Professional Psychologist Act".

History: 1953 Comp., § 67-30-1, enacted by Laws 1963, ch. 92, § 1; 2002, ch. 100, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2002 amendment, effective July 1, 2002, substituted "Chapter 61, Article 9 NMSA 1978" for "This Act".

ANNOTATIONS

Qualification under statute is sufficient to qualify psychologist as expert witness. — Where plaintiff

brought action against defendant for psychological injury and mental anguish as a result of defendant's negligent care following plaintiff's breast reconstructive surgery; the trial court permitted a clinical psychologist to testify as an expert witness for plaintiff; and the psychologist was certified as a clinical psychologist under the New Mexico Professional Psychologist Act, the psychologist was qualified to testify as an expert witness in cases involving the negligent infliction of mental distress. *Whalley v. Sakura*, 804 F.2d 580 (10th Cir. 1986).

61-9-2. Repealed.

Repeals. — Laws 2019, ch. 19, § 10 repealed 61-9-2 NMSA 1978, as enacted by Laws 1989, ch. 41, § 2, relating to legislative findings and purpose, effective February 4,

2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

61-9-3. Definitions. (Repealed effective July 1, 2028.)

As used in the Professional Psychologist Act:

- A. "board" means the New Mexico state board of psychologist examiners;
- B. "conditional prescription certificate" means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication under the supervision of a supervising clinician pursuant to the Professional Psychologist Act;
- C. "independently licensed prescribing clinician" means a licensed physician, osteopathic physician, nurse practitioner, psychiatric nurse practitioner or clinical nurse specialist;
- D. "person" includes an individual, firm, partnership, association or corporation;
- E. "prescribing psychologist" means a licensed psychologist who holds a valid prescription certificate;
- F. "prescription certificate" means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication pursuant to the Professional Psychologist Act;
- G. "psychotropic medication" means a controlled substance or dangerous drug that may not be dispensed or administered without a prescription and whose primary indication for use has been approved by the federal food and drug administration for the treatment of mental disorders or is listed as a psychotherapeutic agent in *Drug Facts and Comparisons 2017*, or the most recent edition of that book, or in *American Hospital Formulary Service Drug Information*;

H. "psychologist" means a person who engages in the practice of psychology or holds the person's self out to the public by any title or description of services representing the person as a psychologist, which incorporates the words "psychological", "psychologist", "psychology", or when a person describes the person's self as above and, under such title or description, offers to render or renders services involving the application of principles, methods and procedures of the science and profession of psychology to persons for compensation or other personal gain;

I. "practice of psychology" means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles, methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health, and further means the rendering of such psychological services to individuals, families or groups regardless of whether payment is received for services rendered. The practice of psychology includes psychological testing or neuropsychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior analysis and therapy; diagnosis and treatment of a mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct and the psychological aspects of physical illness, accident, injury and disability; and psychoeducational evaluation, therapy, remediation and consultation;

J. "school" or "college" means a university or other institution of higher education that is regionally accredited and that offers a full-time graduate course of study in psychology as defined by rule of the board or that is approved by the American psychological association; and

K. "supervising clinician" means a licensed physician, osteopathic physician, nurse practitioner, psychiatric nurse practitioner or clinical nurse specialist who is supervising a psychologist in the prescribing of psychotropic medication.

History: 1953 Comp., § 67-30-3, enacted by Laws 1963, ch. 92, § 3; 1989, ch. 41, § 3; 1993, ch. 12, § 1; 1996, ch. 51, § 5; 1996, ch. 54, § 1; 1999, ch. 106, § 1; 2002, ch. 100, § 4; 2019, ch. 19, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2019 amendment, effective February 4, 2019, defined "independent licensed prescribing clinician" and "supervising clinician" as used in the Professional Psychologist Act; in Subsection B, after "under the supervision of a", deleted "licensed physician" and added "supervising clinician"; added a new Subsection C and redesignated former Subsections C through I as Subsections D through J, respectively; in Subsection G, after "mental disorders", deleted "and" and added "or", after "*Drug Facts and Comparisons*", added "2017, or the most recent edition of that book", and after "*American Hospital Formulary Service*", added "*Drug Information*"; and added Subsection K.

The 2002 amendment, effective July 1, 2002, added new Subsections B, D, E, and F, and redesignated former Subsections B, C, D, and E as present Subsections C, G, H, and I, respectively.

The 1999 amendment, effective, June 18, 1999, deleted "but is not limited to" following "includes" in the second sentence of Subsection D; and in Subsection E, deleted "or approved by the American psychological association" following "accredited", substituted "rule" for "regulation", and added the language beginning "or that" to the end.

The 1996 amendment, effective May 15, 1996, rewrote Subsection E. This section was also amended by Laws 1996, ch. 51, § 5. The section was set out as amended by Laws 1996, ch. 54, § 1. See 12-1-8 NMSA 1978.

The 1993 amendment, effective July 1, 1993, inserted "engages in the practice of psychology or" in Subsection C and made a minor stylistic change.

The 1989 amendment, effective June 16, 1989, rewrote Subsection D, which formerly read "practice of psychology means the application of established methods or procedures of understanding, predicting or modifying behavior. The application of said principles includes counseling, guidance and behavior modification with individuals or groups with problems in the areas of work, family, school and personal relationships; measuring and testing of personality, intelligence, aptitudes, emotions, public opinion, attitudes skills; teaching or lecturing in psychology; and doing research on problems relating to human behavior; and in Subsection E, inserted "which is regionally accredited or" and also inserted "public" preceding "education".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 11.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 4, 5.

61-9-4. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Professional Psychologist Act.

History: 1953 Comp., § 67-30-3.1, enacted by Laws 1974, ch. 78, § 31.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

61-9-4.1. License required. (Repealed effective July 1, 2028.)

Unless licensed to practice psychology under the Professional Psychologist Act, no person shall engage in the practice of psychology or use the title or represent himself as a psychologist or psychologist associate or use any other title, abbreviation, letters, signs or devices that indicate the person is a psychologist or psychologist associate.

History: 1978 Comp., § 61-9-4.1, enacted by Laws 1989, ch. 41, § 4; 1993, ch. 12, § 2; 1996, ch. 54, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 1996 amendment, effective May 15, 1996, deleted the Subsection A designation and deleted Subsection B, which related to persons certified on July 1, 1989.

The 1993 amendment, effective July 1, 1993, inserted "engage in the practice of psychology or" in Subsection A.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 26 to 28, 132.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 12.

61-9-5. State board of examiners; psychology fund. (Repealed effective July 1, 2028.)

A. There is created a "New Mexico state board of psychologist examiners". The board shall be administratively attached to the regulation and licensing department. The board shall consist of eight members appointed by the governor who are residents of New Mexico and who shall serve for three-year staggered terms. The members shall be appointed as follows:

(1) four members shall be professional members who are licensed under the Professional Psychologist Act as psychologists. The governor shall appoint the professional members from a list of names nominated by the New Mexico psychological association, the state psychologist association and the New Mexico school psychologist association;

(2) one member shall be licensed under the Professional Psychologist Act as a psychologist or psychologist associate; and

(3) three members shall be public members who are laymen and have no significant financial interest, direct or indirect, in the practice of psychology.

B. A member shall hold office until the expiration of his appointed term or until a successor is duly appointed. When the term of a member ends, the governor shall appoint his successor for a term of three years. A vacancy occurring in the board membership other than by expiration of term shall be filled by the governor by appointment for the unexpired term of the member. The governor may remove a board member for misconduct, incompetency or neglect of duty.

C. All money received by the board shall be credited to the "psychology fund". Money in the psychology fund at the end of the fiscal year shall not revert to the general fund and shall be used in accordance with the provisions of the Professional Psychologist Act. The members of the board may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

History: 1978 Comp., § 61-9-5, enacted by Laws 1989, ch. 41, § 5; 1993, ch. 251, § 1; 1996, ch. 51, § 6; 1996, ch. 54, § 3; 2003, ch. 408, § 9.

Repeals and reenactments. — Laws 1989, ch. 41, § 5 repealed former 61-9-5 NMSA 1978, as amended by Laws 1981, ch. 239, § 1, relating to state board of examiners, and enacted a new section, effective June 16, 1989.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2003 amendment, effective July 1, 2003, substituted "The board shall be administratively attached to the regulation and licensing department. The board shall

consist" for "consisting" following "psychologist examiners" near the beginning of Subsection A.

The 1996 amendment, effective May 15, 1996, rewrote Subsection C. This section was also amended by Laws 1996, ch. 51, § 6. The section was set out as amended by Laws 1996, ch. 54, § 3. See 12-1-8 NMSA 1978.

The 1993 amendment, effective June 18, 1993, in Subsection A, increased the number of members from seven to eight in the introductory language; added "as psychologists" to the end of the first sentence and added "the state psychologist association and the New Mexico school psychologist association" to the end, in Paragraph (1); and added present Paragraph (2), renumbering former

Paragraph (2) as Paragraph (3) and making a related grammatical change, and in Subsection B, corrected a misspelling in the third sentence.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Officers and Employees §§ 42, 43.
73 C.J.S. Public Administrative Law and Procedure § 9.

61-9-5.1. Actions of board; immunity; certain records not public records. (Repealed effective July 1, 2028.)

A. A member of the board or person working on behalf of the board shall not be civilly liable or subject to civil damages for any good faith action undertaken or performed within the proper functions of the board.

B. All written and oral communications made by a person to the board relating to actual or potential disciplinary action shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. All data, communications and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except:

- (1) to the extent necessary to carry out the board's functions;
- (2) as needed for judicial review of the board's actions; or
- (3) pursuant to a court order issued by a court of competent jurisdiction.

C. Notwithstanding the provisions of Subsection B of this section, at the conclusion of an actual disciplinary action by the board, all data, communications and information acquired by the board relating to an actual disciplinary action taken against a person subject to the provisions of the Professional Psychologist Act shall be public records pursuant to the provisions of the Inspection of Public Records Act.

History: Laws 1996, ch. 54, § 12; 2003, ch. 428, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978, as amended.

The 2003 amendment, effective July 1, 2003, in Subsections B and C, inserted "Inspection of" preceding "Public Records Act".

61-9-6. Board; meeting; powers. (Repealed effective July 1, 2028.)

A. The board shall, annually in the month of July, hold a meeting and elect from its membership a chair, vice chair and secretary-treasurer. The board shall meet at other times as it deems necessary or advisable or as deemed necessary and advisable by the chair or a majority of its members or the governor. Reasonable notice of all meetings shall be given in the manner prescribed by the board. A majority of the board constitutes a quorum at a meeting or hearing.

B. The board may:

- (1) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry into effect the provisions of the Professional Psychologist Act. The rules shall include a code of conduct for psychologists and psychologist associates in the state;
- (2) adopt a seal, and the administrator shall have the care and custody of the seal;
- (3) examine for, approve, deny, revoke, suspend and renew the licensure of psychologist and psychologist associate applicants as provided in the Professional Psychologist Act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];
- (4) conduct hearings in accordance with the Uniform Licensing Act upon complaints concerning the disciplining of a psychologist or psychologist associate; and
- (5) cause the prosecution and enjoinder of persons violating the Professional Psychologist Act and incur related necessary expenses.

C. Within sixty days after the close of each fiscal year, the board shall submit a written report, reviewed and signed by the board members, to the governor concerning the work of the board during the preceding fiscal year. The report shall include the names of psychologists and psychologist associates to whom licenses have been granted; cases heard and decisions rendered in relation to the work of the board; the recommendations of the board as to future policies, including the appropriate application of technology for supervision; and an account of all money received and expended by the board.

History: 1953 Comp., § 67-30-5, enacted by Laws 1963, ch. 92, § 5; 1983, ch. 334, § 1; 1989, ch. 41, § 6; 1996, ch. 51, § 7; 1996, ch. 54, § 4; 2003, ch. 408, § 10; 2021, ch. 93, § 1; 2022, ch. 39, § 40.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico state board of psychologist examiners is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; in Subsection B, after "The board", deleted "is authorized to" and added "may", in Paragraph B(1), deleted "adopt and from time to time revise such", and added "promulgate", and after "rules", deleted "not inconsistent with the law as may be necessary" and added "in accordance with the State Rules Act", in Paragraph B(3), after "the Professional Psychologist Act", added "in accordance with the Uniform Licensing Act", and in Paragraph B(4), after "conduct hearings", added "in accordance with the Uniform Licensing Act".

The 2021 amendment, effective June 18, 2021, required the New Mexico state board of psychologist examiners to include in its annual report to the governor the appropriate application of technology for supervision; and in Subsection C, after "future policies", added "including the appropriate application of technology for supervision".

The 2003 amendment, effective July 1, 2003, deleted "but not be limited to" following "regulations shall include" near the end of Paragraph B(1); deleted Paragraph B(2), concerning employment of administrator and personnel, and redesignated the subsequent paragraphs accordingly; and in Subsection C, deleted "or printed" following "submit a written" near the beginning and deleted

"the names, remuneration and duties of any employees of the board" near the end.

The 1996 amendment, effective May 15, 1996, added "and secretary-treasurer" at the end of the first sentence in Subsection A; substituted "an administrator" for "a secretary" in Paragraph B(2); and substituted "administrator" for "secretary" in Paragraph B(3). This section was also amended by Laws 1996, ch. 51, § 7. The section was set out as amended by Laws 1996, ch. 54, § 3. See 12-1-8 NMSA 1978.

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "annually" for "within sixty days after the effective date of the Professional Psychologist Act and annually thereafter" in the first sentence; in Subsection B(1), inserted "and psychologist associates" in the second sentence; in Subsection B(4), substituted "licensure" for "certification"; and in Subsection C, substituted "licenses" for "certificates" in the second sentence.

ANNOTATIONS

Authority and power of board. — New Mexico state board of psychologist examiners was empowered by the legislature to set standards of conduct for psychologists and to revoke professional licenses when appropriate in response to the violation of those standards. *N.M. State Bd. of Psychologist Exam'rs v. Land*, 2003-NMCA-034, 133 N.M. 362, 62 P.3d 1244, cert. denied, 133 N.M. 413, 63 P.3d 516.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Officers and Employees §§ 69, 230 to 264, 378, 387, 414.

73 C.J.S. Public Administrative Law and Procedure §§ 49 to 171.

61-9-7. Fees; license renewal. (Repealed effective July 1, 2028.)

A. All fees from applicants seeking licensure under the Professional Psychologist Act and all license renewal fees received under the Professional Psychologist Act shall be credited to the psychology fund. No fees shall be refunded.

B. Except as provided in Section 61-1-34 NMSA 1978, the board shall set the charge for an application fee of up to six hundred dollars (\$600) to applicants for licensure under Sections 61-9-9 through 61-9-11.1 NMSA 1978.

C. The board may establish a method to provide for staggered biennial terms. The board may authorize license renewal for one year to establish the renewal cycle.

D. A licensee shall renew a license biennially on or before July 1 by remitting to the board the renewal fee set by the board not exceeding six hundred dollars (\$600) and providing proof of continuing education as required by regulation of the board. Any license issued by the board may be suspended if the holder fails to renew the license by July 1 of any year. A license suspended for failure to renew may be renewed within a period of one year after the suspension upon payment of the renewal fee plus a late fee of one hundred dollars (\$100), together with proof of continuing education satisfactory to the board. The license shall be revoked if the license has not been renewed within one year of the suspension for failure to renew. Prior to issuing a new license, the board may in its discretion require full or partial examination of a former licensee whose license was revoked because of failure to renew.

History: 1953 Comp., § 67-30-6, enacted by Laws 1963, ch. 92, § 6; 1969, ch. 34, § 2; 1978, ch. 188, § 1; 1981, ch. 239, § 2; 1983, ch. 334, § 2; 1987, ch. 65, § 1; 1989, ch. 41, § 7; 2006, ch. 6, § 1; 2020, ch. 6, § 22.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military

service members, their spouses and dependent children, and for certain veterans; and in Subsection B, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2006 amendment, effective May 17, 2006, changed the maximum application fee from \$300 to \$600 in Subsection B; added Subsection C to authorize the board to establish staggered biennial license terms; designated former Subsection C as Subsection D; provided for a biennial

license renewal in Subsection D; and increased the maximum renewal fee from \$300 to \$600 in Subsection D.

The 1989 amendment, effective June 16, 1989, added "license renewal" at the end of the section heading; substituted "license" for "certificate" in the first sentence of

Subsection A; substituted "licensure" for "certification" in Subsections A and B; and rewrote Subsection C.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure § 8.

61-9-8. Records. (Repealed effective July 1, 2028.)

A. The board shall keep a record of its proceedings and a register of all applications for licensure which shall show:

- (1) the name, age and residence of each applicant;
- (2) the date of the application;
- (3) the place of business of the applicant;
- (4) a summary of the educational and other qualifications of the applicant;
- (5) whether an examination was required;
- (6) whether a license was granted;
- (7) the date of the action of the board; and
- (8) such other information as may be deemed necessary or advisable by the board in aid of the requirements of this subsection.

B. Except as provided otherwise in the Professional Psychologist Act, the records of the board are public records and are available to the public in accordance with the Public Records Act [Chapter 14, Article 3 NMSA 1978].

History: 1953 Comp., § 67-30-7, enacted by Laws 1963, ch. 92, § 7; 1989, ch. 41, § 8; 1996, ch. 54, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

Cross references. — For proof of official records, see Rule 1-044 NMRA.

For self-authentication of certified copies of public records, see Rule 11-902D NMRA.

The 1996 amendment, effective May 15, 1996, rewrote Subsection B.

The 1989 amendment, effective June 16, 1989, substituted "licensure" for "certifications" in the introductory paragraph of Subsection A; substituted "a license" for "certification" in Subsection A(6); and made minor stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure § 22.

61-9-9. Licensure of psychologists without examination. (Repealed effective July 1, 2028.)

The board at its discretion may license without written examination any person who has been certified by the American board of examiners in professional psychology and who passes an oral examination as provided in Subparagraph (b) of Paragraph (6) of Subsection A of Section 61-9-11 NMSA 1978.

History: 1978 Comp., § 61-9-9, enacted by Laws 1989, ch. 41, § 9.

Repeals and reenactments. — Laws 1989, ch. 41, § 9, repealed former 61-9-9 NMSA 1978, as amended by Laws 1973, ch. 54, § 1, relating to certification of psychologists without examination, and enacted a new section, effective June 16, 1989.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

Compiler's Notes. — Subparagraph (b) of Paragraph (6) of Subsection A of Section 61-9-11 NMSA 1978 was deleted by Laws 2006, Ch. 6, § 3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 59, 63; 63C Am. Jur. 2d Public Officers and Employees §§ 234, 235.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 20, 23; 73 C.J.S. Public Administrative Law and Procedure § 60.

61-9-10. Licensure of psychologists from other areas; expedited licensure. (Repealed effective July 1, 2028.)

A. Except as provided in Section 61-9-10.1 NMSA 1978 for temporary or other provisional licensure that is not an expedited license, upon application accompanied by a fee as required by

the Professional Psychologist Act, the board shall, without written or oral examination, issue an expedited license to a person who furnishes, upon a form and in such manner as the board prescribes, evidence to the board that the person has been licensed or certified as a psychologist or prescribing psychologist by another licensing jurisdiction for two years. An applicant seeking a license shall demonstrate to the board that the training and education received by the applicant is equivalent to the requirements for a doctoral degree in psychology as provided in the Professional Psychologist Act; that the applicant holds a valid, unrestricted license and is in good standing with the licensing board of that licensing jurisdiction; and the applicant has practiced psychology for at least two years immediately prior to application in New Mexico.

B. The board shall, as soon as practicable but not later than thirty days after an out-of-state licensee files an application for an expedited license, process the application and issue an expedited license in accordance with Section 61-1-31.1 NMSA 1978.

C. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

D. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The rule shall be reviewed annually to determine if amendments to the rule are warranted.

History: 1953 Comp., § 67-30-9, enacted by Laws 1963, ch. 92, § 9; 1989, ch. 41, § 10; 2006, ch. 6, § 2; 2009, ch. 51, § 1; 2019, ch. 19, § 2; 2021, ch. 93, § 2; 2022, ch. 39, § 41.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure by reciprocity, provided that the New Mexico state board of psychologist examiners shall issue without examination an expedited license to a psychologist or prescribing psychologist licensed in another licensing jurisdiction if the applicant holds a license that is current and in good standing issued by the other licensing jurisdiction and the applicant has practiced psychology for at least two years immediately prior to application in New Mexico, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "expedited licensure"; in Subsection A, added "Except as provided in", after "Section 61-9-10.1 NMSA 1978", added "for temporary or other provisional licensure that is not an expedited license", after "without written or oral examination, issue", deleted "a" and added "an expedited", after "prescribing psychologist by another", deleted "state, a territorial possession of the United States, the District of Columbia or another country" and added "licensing jurisdiction", and added the remainder of the subsection; and added Subsections B through D.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2021 amendment, effective June 18, 2021, removed discretionary language, and added mandatory language, related to the board of psychologist examiner's power to issue a license to a person who furnishes evidence to the board that the person has been licensed or certified as a psychologist or prescribing psychologist by another state, territory of the United States, the District of Columbia or another country for two years, and revised the qualifications for an applicant seeking a license pursuant to this section; in the section heading, after "areas", deleted "reciprocity"; after "Professional Psychologist Act, the board", changed "may" to "shall", after "evidence", deleted "satisfactory", after "or another country for", deleted "a minimum of five" and added "two", after "An applicant seeking", deleted "reciprocity" and added "a license", and after "demonstrate to", deleted "the satisfaction of".

The 2019 amendment, effective February 4, 2019, authorized the New Mexico state board of psychologist examiners to provide reciprocity to qualifying prescribing psychologists licensed outside of New Mexico; after "certified as a psychologist", added "or prescribing psychologist".

The 2009 amendment, effective July 1, 2009, deleted the former provisions that provided for licensure of psychologists from Puerto Rico and Canada and for the promulgation of rules to ensure reciprocity; added "or another country for a minimum of five years"; and added the last sentence.

The 2006 amendment, effective May 17, 2006, added the qualification that this section is subject to the provisional and temporary provisions of Laws 2006, ch. 6, § 5 (compiled as 61-9-10.1 NMSA 1978); added "Canadian province" as a reciprocal licensing jurisdiction; and provided that the board shall promulgate rules to ensure a process of reciprocity for licensure of practitioners from other states or a Canadian province.

The 1989 amendment, effective June 16, 1989, substituted "Licensure" for "certification" in the section heading,

substituted "license" for "certificate" near the beginning of the section, deleted "and where the state or territory has like reciprocal privileges for the state of New Mexico" at the end of the section, and made minor stylistic changes throughout the section.

ANNOTATIONS

Reciprocal licensing. — If an applicant establishes under the board's uniform requirements for proving equivalence, that he or she has been duly licensed or certified as a psychologist by another state, and the other state has similar procedures for certifying a New Mexico psychologist, the

state board of psychologist examiners may issue its certificate to that individual. 1969 Op. Att'y Gen. No. 69-136.

Section does not require mutual reciprocity agreement between New Mexico and another state before New Mexico may issue a certificate to a psychologist duly licensed under the laws of that other state. 1969 Op. Att'y Gen. No. 69-136.

All that this section requires is that the other state also provide in a similar manner for certification of an individual psychologist previously licensed in New Mexico. 1969 Op. Att'y Gen. No. 69-136.

61-9-10.1. Provisional and temporary licensure. (Repealed effective July 1, 2028.)

A. A temporary license may be issued to an applicant previously licensed in another jurisdiction and in good standing whose out-of-state license meets current licensing criteria for New Mexico. A temporary license shall be valid for six months and is not subject to extension or renewal, unless a federal or state public health emergency is declared pursuant to the Public Health Emergency Response Act [Chapter 12, Article 10A NMSA 1978] and directly impacts the applicant; in which case, an applicant's temporary license shall be automatically extended for the duration of the public health emergency and for an additional six months, beginning on the day that the public health emergency ends.

B. The granting of a temporary license to the applicant does not include issuance of a conditional prescription certificate unless the board finds the applicant meets the requirements of Section 61-9-17.1 NMSA 1978.

C. A provisional license may be issued to an applicant never previously licensed and who does not meet New Mexico's experience requirements for psychology licensure, but who otherwise meets criteria for education and training. A provisionally licensed psychologist must practice under the supervision of a New Mexico licensed psychologist until fully licensed. A provisional license shall be valid for eighteen months and is not subject to extension or renewal, unless a federal or state public health emergency is declared pursuant to the Public Health Emergency Response Act and directly impacts the applicant; in which case, an applicant's provisional license shall be automatically extended for the duration of the public health emergency and for an additional six months, beginning on the day that the public health emergency ends.

History: Laws 2006, ch. 6, § 5; 2021, ch. 93, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided public health emergency exceptions to existing provisions that prohibit the extension or renewal of temporary and provisional licenses; in Subsection A, after "not subject to extension or renewal"; added "unless a federal or state public health emergency is declared pursuant to the Public Health Emergency Response Act and directly impacts the applicant; in which case, an applicant's temporary license shall be automatically extended for the duration of the public health emergency and for

an additional six months, beginning on the day that the public health emergency ends"; added new subsection designation "B." and redesignated former Subsection B as Subsection C; and in Subsection C, after "not subject to extension or renewal", added "unless a federal or state public health emergency is declared pursuant to the Public Health Emergency Response Act and directly impacts the applicant; in which case, an applicant's provisional license shall be automatically extended for the duration of the public health emergency and for an additional six months, beginning on the day that the public health emergency ends".

61-9-11. Licensure; examination. (Repealed effective July 1, 2028.)

A. The board shall issue a license as a psychologist to an applicant who files an application upon a form and in such manner as the board prescribes and, except as provided in Section 61-1-34 NMSA 1978, pays any fee required by the Professional Psychologist Act, and who furnishes evidence to the board that the applicant:

- (1) has reached the age of majority;
- (2) is not in violation of any of the provisions of the Professional Psychologist Act and the rules adopted pursuant to that act;

(3) is a graduate of:

(a) a doctoral program that is designated as a doctoral program in psychology by a nationally recognized designation system or that is accredited by a nationally recognized accreditation body and holds a degree with a major in clinical, counseling or school psychology from a university offering a full-time course of study in psychology; or

(b) a doctoral program outside the United States or Canada that is equivalent to a program in Subparagraph (a) of this paragraph and holds a degree with a major in clinical, counseling or school psychology from a university offering a full-time course of study in psychology; the board shall promulgate by rule a list of board-approved credential inspection and verification services to appraise foreign degree programs;

(4) has had at least two years of supervised experience in psychological work; provided that:

(a) up to one year of the supervised experience may be obtained in predoctoral practicum hours overseen by a graduate training program and consistent with the guidelines on practicum experience for licensure promulgated by the association of state and provincial psychology boards;

(b) up to one year of the supervised experience may be obtained in a predoctoral internship approved by the American psychological association;

(c) up to one-half year of the supervised experience may be obtained in a predoctoral internship that is not approved by the American psychological association; and

(d) any portion of the required supervised experience not satisfied pursuant to Subparagraphs (a), (b) and (c) of this paragraph shall be obtained in postdoctoral psychological work;

(5) demonstrates professional competence by passing the examination for professional practice in psychology promulgated by the association of state and provincial psychology boards with a total raw score of 140 (seventy percent), before January 1, 1993 or, if after January 1, 1993, a score equal to or greater than the passing score recommended by the association of state and provincial psychology boards;

(6) demonstrates an awareness and knowledge of New Mexico cultures to the board; and

(7) passes such jurisprudence examination as may be given by the board through an on-line testing and scoring mechanism.

B. Upon investigation of the application and other evidence submitted, including a criminal background check, the board shall, not less than thirty days prior to the examination, notify each applicant that the application and evidence submitted for licensure are satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for rejection.

C. The place of examination shall be designated in advance by the board, and examinations shall be given at such time and place and under such supervision as the board may determine.

D. In the event an applicant fails to receive a passing grade, the applicant may apply for re-examination and shall be allowed to take a subsequent examination upon payment of the fee required by the Professional Psychologist Act.

E. The board shall keep a record of all examinations, and the grade assigned to each, as part of its records for at least two years subsequent to the date of examination.

History: 1953 Comp., § 67-30-10, enacted by Laws 1963, ch. 92, § 10; 1983, ch. 334, § 3; 1989, ch. 41, § 11; 1996, ch. 54, § 6; 1999, ch. 106, § 2; 2006, ch. 6, § 3; 2009, ch. 51, § 2; 2011, ch. 135, § 1; 2020, ch. 6, § 23; 2021, ch. 93, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a psychologist; in Subsection A, after "evidence", deleted "satisfactory", deleted former Paragraph A(2), which required the applicant to furnish evidence that the applicant is of good moral character, and redesignated former Paragraphs A(3) through A(8) as Paragraphs A(2) through A(7), respectively, in Paragraph A(4), after "psychological work", deleted "of a type satisfactory to the board", and in

Paragraph A(6), after "cultures", deleted "as determined by" and added "to".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, after "the board prescribes", deleted "accompanied by the" and added "and, except as provided in Section 61-1-34 NMSA 1978, pays any".

The 2011 amendment, effective July 1, 2011, required supervised experience in postdoctoral practicum hours and internship or postdoctoral psychological work.

The 2009 amendment, effective July 1, 2009, deleted former Paragraph (4) of Subsection A that required an applicant to be a graduate of a doctoral program that is designated as a doctoral program in psychology by a nationally recognized accreditation body and hold a degree

in psychology from a university offering a full-time course of study in psychology; added Paragraph (4) of Subsection A; added Subparagraph (b) of Paragraph (5) of Subsection A; and in Subsection B, added "including a criminal background check".

The 2006 amendment, effective May 17, 2006, deleted former Paragraphs (4) and (5), which provided that applicants hold a doctoral degree based in part on a psychological dissertation and have had an internship and one year of experience after receiving a doctoral degree and at least two years of supervised experience in psychological work; required in Paragraph (4) that applicants graduate from a doctoral program in psychology and hold a degree with a major in clinical, counseling or school psychology; required in Subparagraphs (a) and (b) of Paragraph (5) that applicants have had a predoctoral internship and one year of supervised professional training after receiving the doctoral degree and at least two years of supervised experience in psychological work; added Paragraph (7) to require applicants to demonstrate an awareness and knowledge of New Mexico cultures; and added Paragraph (8) to require applicants to pass a jurisprudence examination.

The 1999 amendment, effective, June 18, 1999, in Subsection A deleted "and regulations" following "the rules" in Paragraph (3), substituted the language beginning "a total" to the end for "a minimum score equivalent to or greater than the statistical mean as reported by the association of state and provincial psychology boards for all doctoral-level candidates taking the examination on that occasion; and" in Subparagraph (6)(a); and made a minor stylistic change in Subsection D.

The 1996 amendment, effective May 15, 1996, deleted "as defined in the Professional Psychologist Act" at the end of Paragraph A(4), inserted "supervised" in Paragraph A(5), inserted "and provincial" twice in Subparagraph A(6)(a), deleted "of his area of practice" at the end of the first sentence in Subparagraph A(6)(b), and rewrote Subsections C and D.

The 1989 amendment, effective June 16, 1989, substituted "Licensure" for "Certification" in the section heading and "license" for "certification" in the introductory paragraph of Subsection A; substituted the present language of Subsection A(1) for "complies with the requirements of Subsections A, B and C of Section 61-9-9 NMSA 1978"; added present Subsections A(2), and A(3), redesignated former Subsection A(2) as present Subsection A(4); substituted Subsection A(5) for former Subsection A(3) which read "has had, after receiving the doctoral degree, at least two years of experience in psychological work of a type satisfactory to the board"; redesignated former Subsection A(4) as present Subsection A(6), while substituting all of present language of Subparagraph (a) thereof beginning with "equivalent" for "of seventy-five percent correct"; and in Subsection B substituted "licensure" for "certification" in the first sentence.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 61. Validity of legislation regulating, licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791. 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20.

61-9-11.1. Psychologist associates; licensure; examination. (Repealed effective July 1, 2028.)

A. The board shall issue a license as a psychologist associate to each applicant who files an application upon a form and in such manner as the board prescribes and, except as provided in Section 61-1-34 NMSA 1978, accompanied by the fee required by the Professional Psychologist Act, and who furnishes evidence satisfactory to the board that the applicant:

- (1) has reached the age of majority and is not in violation of any of the provisions of the Professional Psychologist Act and the rules and regulations adopted pursuant to that act;
- (2) holds a master's degree in psychology from a department of psychology of a school or college;
- (3) demonstrates professional competence by passing the examination for professional practice in psychology promulgated by the association of state and provincial psychology boards with a score equivalent to or greater than the statistical mean as reported by the association of state and provincial psychology boards for all master's-level candidates taking the examination on that occasion;
- (4) demonstrates awareness and knowledge of New Mexico cultures to the board; and
- (5) passes such jurisprudence examination as may be given by the board through an on-line testing and scoring mechanism.

B. Upon investigation of the application and other evidence submitted, the board shall, not less than thirty days prior to the examination, notify each applicant that the application and evidence submitted for licensure is satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for rejection.

C. The place of examination shall be designated in advance by the board, and examinations shall be given at such time and place and under such supervision as the board may determine.

D. In the event an applicant fails to receive a passing grade, the applicant may apply for re-examination and shall be allowed to take a subsequent examination upon payment of the fee required by the Professional Psychologist Act.

E. The board shall keep a record of all examinations, and the grade assigned to each, as part of its records for at least two years subsequent to the date of examination.

F. The board may adopt reasonable rules and regulations classifying areas and conditions of practice permissible for psychologist associates.

History: 1978 Comp., § 61-9-11.1, enacted by Laws 1983, ch. 334, § 4; 1989, ch. 41, § 12; 1996, ch. 54, § 7; 2003, ch. 428, § 8; 2006, ch. 6, § 4; 2020, ch. 6, § 24; 2021, ch. 93, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a psychologist associate; and in Subsection A, Paragraph A(1), after "age of majority", deleted "is of good moral character", and in Paragraph A(4), after "cultures", deleted "as determined by" and added "to".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, in the introductory clause, after "prescribes", added "and, except as provided in Section 61-1-34 NMSA 1978".

The 2006 amendment, effective May 17, 2006, deleted former Subparagraph (b) of Paragraph (3) of Subsection A, which provided that applicants had to have passed an oral examination investigating the applicant's

training, experience and knowledge of his area of practice; added Paragraph (4) of Subsection A to require applicants to demonstrate an awareness and knowledge of New Mexico cultures; and added Paragraph (5) of Subsection A to require applicants to pass a jurisprudence examination.

The 2003 amendment, effective July 1, 2003, deleted former Paragraph A(3), concerning experience, and renumbered the remaining paragraph.

The 1996 amendment, effective May 15, 1996, deleted "as defined in the Professional Psychologist Act" at the end of Paragraph A(2), inserted "one of which shall be supervised" in Paragraph A(3), substituted "association of state and provincial" for "American Association of State" twice in Paragraph A(4)(a), and rewrote Subsections C and D.

The 1989 amendment, effective June 16, 1989, substituted "licensure" for "certification" in the catchline; substituted "license" for "certification" in the introductory paragraph of Subsection A; substituted all of the present language of Subparagraph (a) of Subsection A(4) beginning with "score" for "minimum score of sixty percent correct"; and substituted "licensure" for "certification" in the first sentence of Subsection B.

61-9-11.2. Criminal background checks. (Repealed effective July 1, 2028.)

A. The board may adopt rules that provide for criminal background checks for all licensees to include:

- (1) requiring criminal history background checks of applicants for licensure pursuant to the Professional Psychologist Act;
- (2) requiring applicants for licensure to be fingerprinted only upon initial licensure;
- (3) providing for an applicant who has been denied licensure to inspect or challenge the validity of the background check record;
- (4) establishing a fingerprint and background check fee not to exceed seventy-five dollars (\$75.00) to be paid by the applicant; and
- (5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks.

History: Laws 2009, ch. 51, § 4; 2019, ch. 209, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2019 amendment, effective July 1, 2020, provided that applicants for licensure shall be fingerprinted

only upon initial licensure; in Subsection A, in Paragraph A(2), after "fingerprinted", added "only upon initial licensure".

61-9-12. License. (Repealed effective July 1, 2028.)

The board shall issue a license signed by the chairman and vice chairman or their designee whenever an applicant for licensure successfully qualifies as provided for in the Professional Psychologist Act.

History: 1953 Comp., § 67-30-11, enacted by Laws 1963, ch. 92, § 11; 1989, ch. 41, § 13; 1996, ch. 54, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 1996 amendment, effective May 15, 1996, substituted "or their designee" for "of the board".

The 1989 amendment, effective June 16, 1989, substituted "License" for "Certificate" in the section heading, substituted "license" for "certificate" and "licensure" for "certification", and deleted "therefor" following "qualifies".

61-9-13. Denial, revocation or suspension of license. (Repealed effective July 1, 2028.)

A. In accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the board, by an affirmative vote of at least five of its eight members, shall withhold, deny, revoke or suspend a psychologist or psychologist associate license issued or applied for in accordance with the provisions of the Professional Psychologist Act or otherwise discipline a psychologist or psychologist associate upon proof that the applicant, psychologist or psychologist associate:

(1) has been convicted of a felony or an offense involving moral turpitude, the record of conviction being conclusive evidence thereof;

(2) is using a drug, substance or alcoholic beverage to an extent or in a manner dangerous to the psychologist or psychologist associate, any other person or the public or to an extent that the use impairs the psychologist's or psychologist associate's ability to perform the work of a professional psychologist or psychologist associate with safety to the public;

(3) has impersonated another person holding a psychologist or psychologist associate license or allowed another person to use the psychologist's or psychologist associate's license;

(4) has used fraud or deception in applying for a license or in taking an examination provided for in the Professional Psychologist Act;

(5) has accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;

(6) has allowed the psychologist's or psychologist associate's name or license issued under the Professional Psychologist Act to be used in connection with a person who performs psychological services outside of the area of that person's training, experience or competence;

(7) is legally adjudicated insane or mentally incompetent, the record of such adjudication being conclusive evidence thereof;

(8) has willfully or negligently violated the provisions of the Professional Psychologist Act;

(9) has violated any code of conduct adopted by the board;

(10) has been disciplined by another state for acts similar to acts described in this subsection, and a certified copy of the record of discipline of the state imposing the discipline is conclusive evidence;

(11) is incompetent to practice psychology;

(12) has failed to furnish to the board or its representative information requested by the board;

(13) has abandoned patients or clients;

(14) has failed to report to the board adverse action taken against the licensee by:

(a) another licensing jurisdiction;

(b) a professional psychologist association of which the psychologist or psychologist associate is or has been a member;

(c) a government agency; or

(d) a court for actions or conduct similar to acts or conduct that would constitute grounds for action as described in this subsection;

(15) has failed to report to the board surrender of a license or other authorization to practice psychology in another jurisdiction or surrender of membership on a health care staff or in a professional association following a disciplinary investigation, or in lieu of or while under a disciplinary investigation, by any of those authorities for acts or conduct that would constitute grounds for action as defined in this subsection;

(16) has failed to adequately supervise a psychologist associate or a licensed psychologist holding a conditional prescription certificate;

(17) has employed abusive billing practices;

(18) has aided or abetted the practice of psychology by a person not licensed by the board;

or

(19) uses conversion therapy on a minor.

B. A person who has been refused a license or whose license has been restricted or suspended under the provisions of this section may reapply for licensure after more than two years have elapsed from the date the restriction or suspension is terminated.

C. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

History: 1953 Comp., § 67-30-12, enacted by Laws 1963, ch. 92, § 12; 1983, ch. 334, § 5; 1989, ch. 41, § 14; 1996, ch. 54, § 9; 2009, ch. 51, § 3; 2017, ch. 132, § 4; 2019, ch. 19, § 3; 2022, ch. 39, § 42.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico state board of psychologist examiners is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; and in Subsection A, added "In accordance with the Uniform Licensing Act".

The 2019 amendment, effective February 4, 2019, authorized the New Mexico state board of psychologist examiners to deny, revoke or suspend a psychologist or psychologist associate license upon proof that the applicant, licensed psychologist or psychologist associate failed to adequately supervise a licensed psychologist holding a conditional prescription certificate; in Paragraph A(16), after "psychologist associate", added "or a licensed psychologist holding a conditional prescription certificate".

The 2017 amendment, effective June 16, 2017, prohibited the use of conversion therapy on a minor, provided that the New Mexico state board of psychologist examiners may deny, revoke or suspend any license issued by the board if the licensee uses conversion therapy on a minor, and defined certain terms as used in this section; in Subsection A, Paragraph A(15), after "following", added "a disciplinary investigation, or", and added Paragraph A(19); and added Subsection C.

The 2009 amendment, effective July 1, 2009, added "psychologist or psychologist associate".

The 1996 amendment, effective May 15, 1996, substituted "five" for "four" and "eight" for "six" in the introductory language of Subsection A, added Paragraphs A(10) through A(18), deleted former Subsection B relating to the time limit of the suspension of license, redesignated

former Subsection C as Subsection B, and substituted "restricted or suspended" for "revoked" and "the restriction or suspension is terminated" for "denial or revocation is legally effective" in Subsection B.

The 1989 amendment, effective June 16, 1989, substituted "license" for "certificate" in the section heading and throughout the section; in the introductory paragraph of Subsection A substituted "six members" for "five members" and "licensed psychologist" for "certified psychologist"; substituted "drug, substance or" for "narcotic or any" in Subsection A(2); substituted "psychologist or psychologist associate license" for "psychology certificate" in Subsection A(3); made minor stylistic changes in Subsection A(6); and substituted "licensure" for "certification" in Subsection C.

ANNOTATIONS

Scope of board's authority. — Although a psychologist was merely an applicant for certification at the time the applicant engaged in sex with clients, under the supervision of a certified psychologist, the board had jurisdiction to revoke the applicant's certification. *Gares v. N.M. Bd. of Psychologist Exam'rs*, 1990-NMSC-087, 110 N.M. 589, 798 P.2d 190.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

Validity of legislation regulating, licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Sexual relations: civil liability of doctor or psychologist for having sexual relationship with patient, 33 A.L.R.3d 1393.

Privilege, in judicial or quasi-judicial proceedings, arising from relationship between psychiatrist and patient, 44 A.L.R.3d 24.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 35 to 42, 52.

61-9-14. Violation and penalties. (Repealed effective July 1, 2028.)

A. It is a misdemeanor:

- (1) for any person not licensed under the Professional Psychologist Act to practice psychology or to represent himself as a psychologist or a psychologist associate;
- (2) for any person to practice psychology during the time that his license as a psychologist or psychologist associate is suspended, revoked or lapsed; or
- (3) for any person otherwise to violate the provisions of the Professional Psychologist Act.

B. Such misdemeanor shall be punishable upon conviction by imprisonment for not more than three months or by a fine of not more than one thousand dollars (\$1,000) or by both such fine and imprisonment. Each violation shall be deemed a separate offense.

C. Such misdemeanor shall be prosecuted by the attorney general of the state or any district attorney he designates.

History: 1953 Comp., § 67-30-13, enacted by Laws 1963, ch. 92, § 13; 1983, ch. 334, § 6; 1989, ch. 41, § 15; 1993, ch. 12, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 1993 amendment, effective July 1, 1993, inserted "practice psychology or to" in Paragraph (1) of Subsection A.

The 1989 amendment, effective June 16, 1989, deleted "after eighteen months from the effective date of the Professional Psychologist Act" at the end of the introductory paragraph of Subsection A; substituted "licensed" for "certified" in Subsection A(1); in Subsection A(2) substituted "practice psychology during the time that his license" for

"represent himself as a psychologist or psychologist associate during the time that his certification"; and in Subsection B substituted "one thousand dollars (\$1,000)" for "two hundred dollars (\$200)" in the first sentence.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 130.

Validity of legislation regulating, licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28, 33.

61-9-15. Injunctive proceedings. (Repealed effective July 1, 2028.)

A. The board may, in the name of the people of the state of New Mexico, through the attorney general of the state of New Mexico, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act declared to be a misdemeanor by the Professional Psychologist Act.

B. If it be established that the defendant has been or is committing an act declared to be a misdemeanor by the Professional Psychologist Act, the court, or any judge thereof, shall enter a decree perpetually enjoining said defendant from further committing such act.

C. In case of violation of any injunction issued under the provisions of this section, the court, or any judge thereof, may summarily try and punish the offender for contempt of court.

D. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies in the Professional Psychologist Act provided.

History: 1953 Comp., § 67-30-14, enacted by Laws 1963, ch. 92, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

Cross references. — For injunctions, see Rules 1-065 and 1-066 NMRA.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 122, 123.

Privilege, in judicial or quasi-judicial proceedings, arising from relationship between psychiatrist or psychologist and patient, 44 A.L.R.3d 24.

61-9-16. Scope of act. (Repealed effective July 1, 2028.)

A. Nothing in the Professional Psychologist Act shall be construed to limit:

(1) the activities, services and use of an official title on the part of a person in the employ of a federal, state, county or municipal agency or of other political subdivisions or any educational institution chartered by the state insofar as such activities, services and use of any official title are a part of the duties of his office or position with the agency or institution;

(2) the activities and services of a student, intern or resident in psychology pursuing a course of study in psychology at a school or college if these activities and services constitute a part of his supervised course of study and no fee is charged directly by the student, intern or resident; or

(3) the activities of an applicant working under supervision seeking licensure pursuant to the Professional Psychologist Act.

B. Nothing in the Professional Psychologist Act shall in any way restrict the use of the term "social psychologist" by any person who has received a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by a school or college and who has passed comprehensive examinations in the field of social psychology as a part of the requirements for the doctoral degree or has had equivalent specialized training in social psychology and who has notified the board of his intention to use the term "social psychologist" and filed a statement of the fact demonstrating his compliance with this subsection. A social psychologist shall not practice in any psychological specialty outside that of social psychology without complying with the provisions of the Professional Psychologist Act.

C. Lecturers in psychology from any school or college may utilize their academic or research titles when invited to present lectures to institutions or organizations.

D. Nothing in the Professional Psychologist Act prohibits qualified members of other professional groups who are licensed or regulated under the laws of this state from engaging in activities within the scope of practice of their respective licensing or regulation statutes, but they shall not hold themselves out to the public by any title or description of services that would lead the public to believe that they are psychologists, and they shall not state or imply that they are licensed to practice psychology.

E. Nothing in the Professional Psychologist Act shall be construed to prevent an alternative, metaphysical or holistic practitioner from engaging in nonclinical activities consistent with the standards and codes of ethics of that practice.

F. Specifically exempted from the Professional Psychologist Act are:

(1) alcohol or drug abuse counselors working under appropriate supervision for a non-profit corporation, association or similar entity;

(2) peer counselors of domestic violence or independent-living peer counselors working under appropriate supervision in a nonprofit corporation, association or similar entity;

(3) duly ordained, commissioned or licensed ministers of a church; lay pastoral-care assistants; science of mind practitioners providing uncompensated counselor or therapist services on behalf of a church; and Christian science practitioners;

(4) students enrolled in a graduate-level counselor and therapist training program and rendering services under supervision;

(5) hypnotherapists certified by the American council of hypnotist examiners or the southwest hypnotherapists examining board, providing nonclinical services from July 1, 1994 to June 30, 1998;

(6) pastoral counselors with master's or doctoral degrees, who are certified by the American association of pastoral counselors; and

(7) practitioners of Native American healing arts.

History: 1953 Comp., § 67-30-15, enacted by Laws 1963, ch. 92, § 15; 1989, ch. 41, § 16; 1993, ch. 12, § 4;

1996, ch. 54, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 1996 amendment, effective May 15, 1996, added Paragraph A(3), and, in Subsection E, deleted the Paragraph (1) designation and redesignated former Paragraph (2) as Subsection F and made related changes, and deleted "from July 1, 1994 to June 30, 1998" from the end of Paragraph F(6).

The 1993 amendment, effective July 1, 1993, deleted "as defined in the Professional Psychologist Act" following "college" in Paragraph (2) of Subsection A, in the first sentence of Subsection B, and in Subsection C; in Subsection D, substituted "who are licensed or regulated under the laws of this state from engaging in activities within the scope of practice of their respective licensing or regulation statutes" for "from engaging in activities consistent with the standards and ethics of their respective professions"; and added Subsection E.

The 1989 amendment, effective June 16, 1989, in Subsection A(1), substituted "the agency or institution" for "such agency or institution or a private agency or business in which the psychological services performed are the requirements of a salaried position, provided that such private agency or business does not charge a

fee for such services"; deleted former Subsection B, relating to employment of psychologists by corporations, partnerships or business associations; redesignated former Subsection C as present Subsection B and made a minor stylistic change therein; redesignated former Subsection D as present Subsection C; and added present Subsection D.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 31, 63, 132.

Validity of legislation regulating licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

61-9-17. Drugs; medicines. (Repealed effective July 1, 2028.)

A. Except as provided in Subsections B and C of this section, psychologists or psychologist associates shall not administer or prescribe drugs or medicine or in any manner engage in the practice of medicine as defined by the laws of this state.

B. A licensed psychologist holding a conditional prescription certificate may prescribe psychotropic medication under the supervision of a supervising clinician pursuant to the Professional Psychologist Act.

C. A prescribing psychologist may prescribe psychotropic medication pursuant to the Professional Psychologist Act.

History: 1953 Comp., § 67-30-16, enacted by Laws 1963, ch. 92, § 16; 1983, ch. 334, § 7; 1989, ch. 41, § 17; 2002, ch. 100, § 5; 2019, ch. 19, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

Cross references. — For definition of "practice of medicine," see 61-6-6 NMSA 1978.

The 2019 amendment, effective February 4, 2019, provided that a licensed psychologist holding a conditional prescription certificate may prescribe psychotropic medication under the supervision of a supervising clinician; in Subsection B, after "supervision of a", deleted "licensed physician" and added "supervising clinician".

The 2002 amendment, effective July 1, 2002, inserted the exception clause in Subsection A; and added Subsections B and C.

The 1989 amendment, effective June 16, 1989, substituted "licensed" for "certified".

ANNOTATIONS

Law reviews. — For case note, "Workers' Compensation Law: A Clinical Psychologist Is Qualified to Give Expert Medical Testimony Regarding Causation: Madrid v. University of California, d/b/a Los Alamos National Laboratory," see 18 N.M.L. Rev. 637 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 36, 50, 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 15, 26, 27.

61-9-17.1. Conditional prescription certificate; prescription certificate; application; requirements; rulemaking by board; issuance, denial, renewal and revocation of certification. (Repealed effective July 1, 2028.)

A. A psychologist may apply to the board for a conditional prescription certificate. The application shall be made on a form approved by the board and be accompanied by evidence satisfactory to the board that the applicant:

(1) has completed a doctoral program in psychology from an accredited institution of higher education or professional school, or, if the program was not accredited at the time of the applicant's graduation, that the program meets professional standards determined acceptable by the board;

(2) holds a current license to practice psychology in New Mexico;

(3) has successfully completed pharmacological training from an institution of higher education approved by the board and the New Mexico medical board or from a provider of continuing education approved by the board and the New Mexico medical board;

(4) has passed a national certification examination approved by the board and the New Mexico medical board that tests the applicant's knowledge of pharmacology in the diagnosis, care and treatment of mental disorders;

(5) within the five years immediately preceding the date of application, has successfully completed an organized program of education approved by the board and the New Mexico medical board and consisting of didactic instruction of no fewer than four hundred fifty classroom hours in at least the following core areas of instruction:

- (a) neuroscience;
- (b) pharmacology;
- (c) psychopharmacology;
- (d) physiology;
- (e) pathophysiology;
- (f) appropriate and relevant physical and laboratory assessment; and
- (g) clinical pharmacotherapeutics;

(6) within the five years immediately preceding the date of application, has been certified by each of the applicant's supervising independently licensed prescribing clinicians as having successfully completed a supervised and relevant clinical experience, approved by the board and the New Mexico medical board, of:

(a) no less than an eighty-hour practicum in clinical assessment and pathophysiology under the supervision of an independently licensed prescribing physician; and

(b) an additional supervised practicum of at least four hundred hours treating no fewer than one hundred patients with mental disorders, the practica to have been supervised by any one or a combination of a psychiatrist or other appropriately trained independently licensed prescribing physician and determined by the board and the New Mexico medical board to be sufficient to competently train the applicant in the treatment of a diverse patient population. One-to-one supervision shall be provided either face-to-face, telephonically or by video conference;

(7) has malpractice insurance in place, sufficient to satisfy the rules adopted by the board and the New Mexico medical board, that will cover the applicant during the period the conditional prescription certificate is in effect; and

(8) meets all other requirements, as determined by rule of the board, for obtaining a conditional prescription certificate.

B. The board shall issue a conditional prescription certificate if it finds that the applicant has met the requirements of Subsection A of this section. The certificate shall be valid for a period of two years, at the end of which the holder may again apply pursuant to the provisions of Subsection A of this section. A psychologist with a conditional prescription certificate may prescribe psychotropic medication under the supervision of a supervising clinician subject to the following conditions:

(1) the psychologist shall continue to hold a current license to practice psychology in New Mexico and continue to maintain malpractice insurance;

(2) the psychologist shall notify the board of the name of the psychologist's supervising clinician; and

(3) a supervising clinician shall notify the supervising clinician's own licensing board of the name of each psychologist under the supervising clinician's supervision.

C. A supervising clinician shall not be liable for the acts of a psychologist under the supervising clinician's supervision unless the injury or loss arises from those acts under the direction and control of the supervising clinician.

D. A psychologist may apply to the board for a prescription certificate. The application shall be made on a form approved by the board and be accompanied by evidence satisfactory to the board that the applicant:

(1) has been issued a conditional prescription certificate and has successfully completed two years of prescribing psychotropic medication as certified by the supervising clinician;

(2) has successfully undergone a process of independent peer review approved by the board and the New Mexico medical board;

(3) holds a current license to practice psychology in New Mexico;

(4) has malpractice insurance in place, sufficient to satisfy the rules adopted by the board, that will cover the applicant as a prescribing psychologist; and

(5) meets all other requirements, as determined by rule of the board, for obtaining a prescription certificate.

E. The board shall issue a prescription certificate if it finds that the applicant has met the requirements of Subsection D of this section. A psychologist with a prescription certificate may prescribe psychotropic medication pursuant to the provisions of the Professional Psychologist Act if the psychologist:

(1) continues to hold a current license to practice psychology in New Mexico and continues to maintain malpractice insurance; and

(2) annually satisfies the continuing education requirements for prescribing psychologists, as set by the board, which shall be no fewer than twenty hours each year.

F. The board shall promulgate rules providing for the procedures to be followed in obtaining a conditional prescription certificate, a prescription certificate and renewals of a prescription certificate. The board may set reasonable application and renewal fees.

G. The board shall promulgate rules establishing the grounds for denial, suspension or revocation of conditional prescription certificates and prescription certificates authorized to be issued pursuant to this section, including a provision for suspension or revocation of a license to practice psychology upon suspension or revocation of a certificate. Actions of denial, suspension or revocation of a certificate shall be in accordance with the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

History: Laws 2002, ch. 100, § 6; 2019, ch. 19, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2019 amendment, effective February 4, 2019, revised the requirements for applicants applying to the New Mexico state board of psychologist examiners for a conditional prescription certificate, revised the conditions under which a psychologist with a conditional prescription certificate may prescribe psychotropic medication, added a liability provision for supervising clinicians; substituted "medical board" for "board of medical examiners" throughout; in Paragraph A(6), after "certified by", added "each of", and after "applicant's supervising", deleted "psychiatrist or physician" and added "independently licensed

prescribing clinicians", in Subparagraph A(6)(a), after "pathophysiology", added "under the supervision of an independently licensed prescribing physician", in Subparagraph A(6)(b), after "supervised by", added "any one or a combination of", after "appropriately trained", added "independently licensed prescribing", and added the last sentence; in Subsection B, after "under the supervision of a", deleted "licensed physician" and added "supervising clinician", deleted former Paragraphs B(2) and B(3) and added new Paragraphs B(2) and B(3); added a new Subsection C and redesignated former Subsections C through F as Subsections D through G, respectively; and in Paragraph D(1), after "supervising", deleted "licensed physician" and added "clinician".

61-9-17.2. Prescribing practices. (Repealed effective July 1, 2028.)

A. A prescribing psychologist or a psychologist with a conditional prescription certificate may administer and prescribe psychotropic medication within the recognized scope of the profession, including the ordering and review of laboratory tests in conjunction with the prescription, for the treatment of mental disorders.

B. When prescribing psychotropic medication for a patient, the prescribing psychologist or the psychologist with a conditional prescription certificate shall maintain an ongoing collaborative relationship with the health care practitioner who oversees the patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical condition and significant changes in the patient's medical or psychological condition are discussed.

C. The ongoing collaborative relationship shall be maintained pursuant to guidelines developed by the board and the New Mexico medical board, which shall optimize patient care.

D. The guidelines shall ensure that the prescribing psychologist or the psychologist with a conditional prescription certificate and the health care practitioner coordinate, and collaborate on, the care of the patient to provide optimal care. Nothing in this subsection shall require a prescribing psychologist or psychologist with a conditional prescription certificate to give prior notice to or obtain prior approval from a health care practitioner to prescribe psychotropic medication to a patient with whom the prescribing psychologist has established a psychologist-patient relationship; provided that the psychologist provides written notice of the prescription to the health care practitioner within twenty-four hours of its issuance to such patient.

E. A committee composed of members of the board and the New Mexico medical board shall be established and, pursuant to the guidelines, shall evaluate complaints. The committee shall report its findings and recommendations to each board for each board's appropriate actions.

F. A prescription written by a prescribing psychologist or a psychologist with a conditional prescription certificate shall:

- (1) comply with applicable state and federal laws;
- (2) be identified as issued by the psychologist as "psychologist certified to prescribe"; and
- (3) include the psychologist's board-assigned identification number.

G. A prescribing psychologist or a psychologist with a conditional prescription certificate shall not delegate prescriptive authority to any other person. Records of all prescriptions shall be maintained in patient records.

H. When authorized to prescribe controlled substances, a prescribing psychologist or a psychologist with a conditional prescription certificate shall file with the board in a timely manner all individual federal drug enforcement administration registrations and numbers. The board and the New Mexico medical board shall maintain current records on every psychologist, including federal registrations and numbers.

I. The board shall provide to the board of pharmacy and the New Mexico medical board an annual list of prescribing psychologists and psychologists with conditional prescription certificates that contains the information agreed upon between the board, the New Mexico medical board and the board of pharmacy. The board shall promptly notify the board of pharmacy of psychologists who are added to or deleted from the list.

J. For the purpose of this section:

(1) "collaborative relationship" means a cooperative working relationship between a prescribing psychologist or a psychologist with a conditional prescription certificate and a health care practitioner in the provision of patient care, including diagnosis and cooperation in the management and delivery of physical and mental health care; and

(2) "health care practitioner" means a physician, osteopathic physician, nurse practitioner, physician assistant or clinical nurse specialist.

History: Laws 2002, ch. 100, § 7; 2019, ch. 19, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 2019 amendment, effective February 4, 2019, required prescribing psychologists and psychologists with a conditional prescription certificate to provide written notice to health care practitioners within 24 hours of a prescription to a practitioner's patient; substituted "medical board" for "board of medical examiners" throughout; added new subsection designations "C", "D", and "E" and

redesignated former Subsections C through G as Subsections F through J, respectively; in Subsection D, after "conditional prescription certificate and the", deleted "treating physician" and added "health care practitioner", and after "to provide optimal care.", added the remainder of the subsection; in Subsection H, after "federal drug enforcement", deleted "agency" and added "administration"; and in Paragraph J(2), after "nurse practitioner", added "physician assistant or clinical nurse specialist".

61-9-17.3. Prescription monitoring program; board to promulgate rules. (Repealed effective July 1, 2028.)

By January 1, 2020, the board shall promulgate rules to carry out the provisions of the prescription monitoring program established by Section 26-1-16.1 NMSA 1978 insofar as that program applies to prescribing psychologists.

History: Laws 2019, ch. 19, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

Emergency clauses. — Laws 2019, ch. 19, § 11 contained an emergency clause and was approved February 4, 2019.

61-9-18. Privileged communications. (Repealed effective July 1, 2028.)

A licensed psychologist or psychologist associate shall not be examined without the consent of his client as to any communication made by the client to him or his advice given in the course of professional employment; nor shall a licensed psychologist's or psychologist associate's secretary, stenographer, clerk or any person supervised by the psychologist or psychologist associate be examined without the consent of his employer concerning any fact the knowledge of which he has acquired in such capacity.

History: 1953 Comp., § 67-30-17, enacted by Laws 1963, ch. 92, § 17; 1983, ch. 334, § 8; 1989, ch. 41, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-9-19 NMSA 1978.

The 1989 amendment, effective June 16, 1989, twice substituted "licensed psychologist" for "certified psychologist", and substituted "clerk or any person supervised by the psychologist or psychologist associate" for "or clerk".

ANNOTATIONS

Law reviews. — For case note, "Workers' Compensation Law: A Clinical Psychologist Is Qualified to Give Expert Medical Testimony Regarding Causation: Madrid v.

University of California, d/b/a Los Alamos National Laboratory," see 18 N.M.L. Rev. 637 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 169, 170.

Privilege, judicial or quasi-judicial proceedings, arising from relationship between psychiatrist and patient, 44 A.L.R.3d 24.

61-9-19. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The New Mexico state board of psychologist examiners is terminated on July 1, 2027 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Professional Psychologist Act until July 1, 2028. Effective July 1, 2028, the Professional Psychologist Act is repealed.

History: 1953 Comp., § 67-30-18, enacted by Laws 1978, ch. 188, § 2; 1981, ch. 241, § 22; 1985, ch. 87, § 7; 1989, ch. 41, § 19; 1996, ch. 51, § 8; 1996, ch. 54, § 11; 1997, ch. 46, § 9; 2003, ch. 428, § 9; 2009, ch. 96, § 6; 2015, ch. 119, § 7; 2021, ch. 50, § 4.

The 2021 amendment, effective June 18, 2021, extended the sunset date for the New Mexico state board of psychologist examiners, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the New Mexico state board of psychologist examiners to July 1, 2021, and the repeal date to July 1, 2022.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, substituted "the Professional Psychologist Act" for "Chapter 61,

Article 9 NMSA 1978" throughout the section, and in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004".

The 1997 amendment, effective June 20, 1997, substituted "2003" for "1997", substituted "2004" for "1998", and substituted "July 1, 2004, Chapter 61, Article 9 NMSA 1978" for "July 1, 1998 Article 9 of Chapter 61, NMSA 1978".

The 1996 amendment, effective May 15, 1996, substituted "1997" for "1995" in the first sentence and "1998" for "1996" in the second and third sentences. This section was also amended by Laws 1996, ch. 51, § 8. The section was set out as amended by Laws 1996, ch. 54, § 3. See 12-1-8 NMSA 1978.

The 1989 amendment, effective June 16, 1989, substituted "1995" for "1991" in the first sentence, and substituted "1996" for "1992" in the second and third sentences.

ARTICLE 9A

Counseling and Therapy

Sec.

- 61-9A-1. Short title. (Repealed effective July 1, 2028.)
- 61-9A-2. Purpose. (Repealed effective July 1, 2028.)
- 61-9A-3. Definitions. (Repealed effective July 1, 2028.)
- 61-9A-4. License or registration required. (Repealed effective July 1, 2028.)
- 61-9A-5. Scopes of practice. (Repealed effective July 1, 2028.)
- 61-9A-6. Exemptions. (Repealed effective July 1, 2028.)
- 61-9A-7. Board created; members; appointment; terms; compensation. (Repealed effective July 1, 2028.)
- 61-9A-7.1. Actions of board; immunity; certain records not public records. (Repealed effective July 1, 2028.)
- 61-9A-8. Department duties. (Repealed effective July 1, 2028.)
- 61-9A-9. Board; powers and duties. (Repealed effective July 1, 2028.)
- 61-9A-10. Professional mental health counselor; requirements for licensure. (Repealed effective July 1, 2028.)
- 61-9A-11. Professional clinical mental health counselor; requirements for licensure. (Repealed effective July 1, 2028.)

61-9A-11.1. Professional clinical mental health counselor; requirements for licensure. (Repealed effective July 1, 2028.)

61-9A-11.2. Repealed.

61-9A-12. Marriage and family therapist; requirements for licensure. (Repealed effective July 1, 2028.)

61-9A-12.1. Licensed associate marriage and family therapist or counselor; requirements for licensure. (Repealed effective July 1, 2028.)

61-9A-13. Professional art therapist; requirements for licensure. (Repealed effective July 1, 2028.)

61-9A-14. Requirements for licensed mental health counselor. (Repealed effective July 1, 2028.)

61-9A-14.1. Substance abuse associate; requirements for licensure. (Repealed effective July 1, 2028.)

61-9A-14.2. Alcohol and drug abuse counselor; requirements for licensure. (Repealed effective July 1, 2028.)

61-9A-14.3. Alcohol and drug abuse counselor; requirements for grandfathered licensure. (Repealed effective July 1, 2028.)

61-9A-14.4. Licensed substance abuse associates; medical assistance; reimbursement for services.

61-9A-15. Examinations. (Repealed effective July 1, 2028.)

Sec. 61-9A-16. Temporary licensure. (Repealed effective July 1, 2028.)	Sec. 61-9A-26. License and registration; denial, suspension and revocation. (Repealed effective July 1, 2028.)
61-9A-17 to 61-9A-21.1. Repealed.	61-9A-27. Privileged communications. (Repealed effective July 1, 2028.)
61-9A-22. Expedited licensure by credentials. (Repealed effective July 1, 2028.)	61-9A-28. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)
61-9A-23. License and registration renewal. (Repealed effective July 1, 2028.)	61-9A-29. Injunctive proceedings. (Repealed effective July 1, 2028.)
61-9A-24. License and registration fees. (Repealed effective July 1, 2028.)	61-9A-30. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)
61-9A-25. Fund created. (Repealed effective July 1, 2028.)	

61-9A-1. Short title. (Repealed effective July 1, 2028.)

Chapter 61, Article 9A NMSA 1978 may be cited as the "Counseling and Therapy Practice Act".

History: Laws 1993, ch. 49, § 1; 1999, ch. 161, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 1999 amendment, effective July 1, 1999, substituted "Chapter 61, Article 9A NMSA 1978" for "Sections 1 through 30 of this act".

61-9A-2. Purpose. (Repealed effective July 1, 2028.)

In the interest of public health, safety and welfare and to protect the public from unprofessional, improper, incompetent and unlawful counseling and therapy practice, it is necessary to provide laws and regulations to govern the practice of counseling and therapy. The primary responsibility and obligation of the counseling and therapy practice board is to protect the public.

History: Laws 1993, ch. 49, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

61-9A-3. Definitions. (Repealed effective July 1, 2028.)

As used in the Counseling and Therapy Practice Act:

A. "accredited institution" means a university or college accredited by an accrediting agency of institutions of higher education;

B. "appraisal" means selecting, administering, scoring and interpreting instruments designed to assess a person's aptitudes, attitudes, abilities, achievements, interests, personal characteristics and current emotional or mental state by appropriately educated, trained and experienced clinicians and the use of nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to or changing life situations of a physical, mental or emotional nature; "appraisal" shall not be construed to permit the performance of any act that a counselor or a therapist is not educated, trained and licensed to perform;

C. "appropriate clinical supervision" means, as defined by rule, supervision provided by a licensed:

- (1) professional clinical mental health counselor;
- (2) marriage and family therapist;
- (3) professional art therapist;
- (4) psychiatrist;
- (5) clinical psychologist;
- (6) clinical nurse specialist in psychiatry;
- (7) independent social worker with two years of mental health and supervised clinical experience; or
- (8) alcohol and drug abuse counselor with three years of work experience in the field of alcohol and drug abuse prior to providing supervision;

D. "appropriate clinical supervisor for substance abuse associate" means a person who has education and experience specific to the career track of the associate and has training in transmitting knowledge, skills and attitudes through a relational process that includes direct oversight of the clinical work;

E. "approved clinical supervisor" means a person who is a licensed professional clinical mental health counselor, licensed marriage and family therapist, licensed professional art therapist, licensed psychiatrist, licensed clinical psychologist, clinical nurse specialist in psychiatry or licensed independent social worker and provides supervision to a licensed mental health counselor or therapist;

F. "art therapy" means the rendering of art therapy principles whereby communication is facilitated through therapeutic counseling and art media. This involves the application of the principles of human development and psychological theories, which are implemented in the full spectrum of models of assessment and treatment, including psychodynamics and cognitive, interpersonal and other therapeutic means to individuals, couples, families, groups and communities for the promotion of optimal mental health;

G. "board" means the counseling and therapy practice board;

H. "client contact hours" means the face-to-face time spent with a client to appraise, assess, evaluate, diagnose, treat psychopathology and provide counseling services;

I. "clinical counseling" means the rendering of counseling services involving the application of principles of psychotherapy, human development, learning theory, diagnosis, treatment and the etiology of mental illness and dysfunctional behavior to individuals, couples, families or groups for the purpose of assessing and treating psychopathology and promoting optimal mental health;

J. "consultation" means the voluntary, nonsupervisory relationship between professionals or other pertinent persons, in application of scientific counseling, guidance and human development principles and procedures to provide assistance in understanding and resolving a current or potential problem that the consultee may have in relation to a third party, be it an individual, group, family or organization;

K. "counselor training and education" means a process that prepares counselors and therapists in both didactic and clinical aspects of counseling;

L. "course" means an integrated, organized course of study, which encompasses a minimum of one school semester or equivalent hours;

M. "counseling" means the application of scientific principles and procedures in therapeutic counseling, guidance and human development to provide assistance in understanding and solving a mental, emotional, physical, social, moral, educational, spiritual or career development and adjustment problem that a client may have;

N. "counseling-related field" as defined by rule, means a degree in guidance counseling, mental health-community counseling or agency counseling; psychology, clinical psychology or counseling psychology; human services; family services; human and family studies; art therapy; or art education with an emphasis in art therapy;

O. "department" means the regulation and licensing department or the division of the department designated to administer the counseling and therapy practice board;

P. "diagnosis and treatment planning" means assessing, analyzing and providing diagnostic descriptions of mental, emotional or behavioral conditions; exploring possible solutions; and developing and implementing a treatment plan for mental, emotional and psychosocial adjustment or development. "Diagnosis and treatment planning" shall not be construed to permit the performance of any act that counselors or therapists are not educated, trained and licensed to perform;

Q. "evaluation" means the act of making informed decisions based on the use and analysis of pertinent data;

R. "internship" means a distinctly defined, pre-graduate, supervised clinical experience in which the student refines, enhances and integrates professional knowledge with basic counselor or therapist skills appropriate to the student's program and preparation for postgraduate professional placement;

S. "licensure" means the process by which a state agency or government grants permission to an individual to engage in a given profession and to use the designated title of that profession after the applicant has attained the minimal degree of competency necessary to ensure that the public health, safety and welfare are reasonably well protected;

T. "marriage and family therapy" means the assessment, diagnosis and treatment of nervous and mental disorders, whether cognitive, affective or behavioral, within the context of marriage and family systems;

U. "mental disorder" means any of several conditions or disorders that meet the diagnostic criteria contained in the diagnostic and statistical manual of the American psychiatric association or the world health organization's international classification of mental disorders;

V. "practicum" means a distinctly defined, supervised clinical experience in which the student develops basic counselor or therapist skills and integrates professional knowledge, which practicum is completed prior to or concurrent with an internship;

W. "program" means a structured sequence of curricular and clinical experiences housed within an academic unit;

X. "referral" means evaluating and identifying the needs of a client to determine the advisability of referrals to other specialists, advising the client of such judgments and communicating as requested or deemed appropriate to such referral sources;

Y. "research" means a systematic effort to collect, analyze and interpret quantitative or qualitative data that describe how social characteristics, behavior, emotions, cognition, disabilities, mental disorders and interpersonal transactions among individuals, couples, families and organizations interact;

Z. "standard" means a minimal criterion that must be met; and

AA. "substance abuse-related field" means a degree in guidance counseling, mental health-community counseling, agency counseling, psychology, clinical psychology, counseling psychology, human services, family services, human and family studies, social work, art therapy or art education with appropriate clinical background and two hundred seventy-six clock hours in education or training in alcohol and drug abuse counseling.

History: Laws 1993, ch. 49, § 3; 1996, ch. 61, § 1; 1999, ch. 161, § 2; 2003, ch. 422, § 1; 2005, ch. 210, § 1; 2021, ch. 99, § 1; 2022, ch. 39, § 43.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised the definition of "appropriate clinical supervision" and removed the definition of "defined by rule", as used in the Counseling and Therapy Practice Act; in Subsection C, Paragraph C(8), after "drug abuse counselor", deleted "A licensed alcohol and drug abuse counselor shall have completed" and added "with"; and deleted Subsection O and redesignated former Subsections P through BB as Subsections O through AA, respectively.

The 2021 amendment, effective June 18, 2021, revised the definitions of terms used in the Counseling and Therapy Practice Act related to education and experience requirements; after "counseling psychology", added "human services; family services" throughout; in Subsection C, Paragraph C(8), after "have completed three years of", added "work experience in the field of", and after "alcohol and drug abuse", deleted "experience"; and in Subsection N, after "clinical psychology", added "or".

The 2005 amendment, effective June 17, 2005, deleted the definition of "alcohol abuse counselor" in former Subsection B; deleted the definition of "appraisal" in former Subsection C; changed "appropriate supervision" to "appropriate clinical supervision" as the defined term in Subsection C; deleted "licensed professional health counselor" in Subsection C(1); added Subsections C(6) and (7); deleted from former Subsection E the requirement that three years of alcohol and drug experience be acquired by an alcohol and drug abuse counselor after licensure and the former provision that supervision may be provided by a clinical nurse specialist in psychiatry or licensed independent social worker with two years of mental health and supervised clinical experience; added the definition of "appropriate clinical supervisor for substance abuse associate" in Subsection D; changed "appropriate clinical supervision" to "approved clinical supervisor" as the defined term in Subsection E; provided in Subsection E that an approved clinical supervisor is a person who provides supervision to a licensed mental health counselor or therapist; added the definition of "art therapy" in Subsection F;

changed "consulting and consultation" to "consultation" in Subsection J; deleted from Subsection N the former provision that "counseling-related field" include those fields in which training includes coursework in the diagnosis and treatment of mental disorders, added psychology to the list of counseling-related fields and deleted the requirement that art education include appropriate clinical background to meet the clinical core curriculum; deleted the definition of "counseling and therapy practice" in former Subsection O; deleted the definition of "counselor and therapist practitioner" in former Subsection P; added the definition of "defined by rule" in Subsection O; deleted the definition of "drug abuse counselor" in former Subsection S, deleted the former requirement in Subsection S that the experience enhance basic counseling or student development and skills and integrate and authenticate professional knowledge; deleted the definition of "licensed mental health counselor" in former Subsection V; deleted the definition of "marriage and family therapist" in former Subsection Y; changed "classification of diseases manual" to "classification of mental disorders" in Subsection V; deleted the definition of "peer counselor" in former Subsection AA; deleted the definition of "practice of alcohol or drug abuse counseling" in former Subsection BB; deleted the definition of "practice of art therapy" in former Subsection CC; deleted the definition of "practice of marriage and family therapy" in former Subsection DD; deleted the definition of "practice of professional clinical mental health counseling" in former Subsection EE; deleted the definition of "practice of professional mental health counseling" in former Subsection FF; deleted the definition of "practice of registered mental health counseling" and "practice of licensed mental health counseling" in former Subsection GG; deleted the definition of "practice of registered independent mental health counseling" in former Subsection HH; provided in Subsection W that "practicum" includes the development of basic counselor or therapist skills and that practicum may be completed concurrent with an internship; deleted the definition of "professional art therapist" in former Subsection KK; deleted the definition of "professional clinical mental health counselor" in former Subsection LL; deleted the definition of "professional mental health counselor" in former Subsection MM; deleted the definition of "registered independent mental

health counselor" in former Subsection PP; deleted the definition of "substance abuse counselor" in former Subsection RR; deleted the definition of "substance abuse trainee" in former Subsection SS; deleted the definition of "supervision" in former Subsection TT; and added the definition of "substance abuse-related field" in Subsection BB.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 1999 amendment, effective July 1, 1999, substituted "a person" and "a licensed person" for "an individual" throughout the section; substituted "regional" for "nationally recognized" and deleted "or an approved institution or program as determined by the board" in Subsection A; inserted "alcohol and drug abuse counselor or independent" and deleted "psychiatric nurse or other similar supervision approved by the board" following "social worker" in Subsection E; added Subsections G, N, Y, and EE and redesignated the remaining subsections accordingly; inserted "assessing and" in Subsection H; inserted "licensed or registered" preceding "practice of" and inserted "independent mental health counseling" preceding "marriage" in Subsection K; inserted "assessment" in Subsection P; substituted "a person who is licensed for independent" for "an individual who engages in the" in Subsection Q; substituted "or" for "and" in Subsection S; substituted "licensed practice" for "rendering" in Subsections U, V, and W; substituted "licensed practice of counseling services" for "rendering" and deleted "but are not

limited to" following "include" in Subsection T; deleted "married" preceding "couples" in Subsection U; inserted "clinical", deleted "including psychopathology" following "disorders" and "but is not limited to" following "includes" in Subsection V; deleted "but not limited to" following "including" in Subsections W and X; substituted "licensed" for "registered" in Subsections DD and GG; substituted "licensed by" for "registered with" in Subsection DD; and substituted "direct observation" for "appropriate supervision" in Subsection GG.

The 1996 amendment, effective July 1, 1996, added Subsections B, C, M, Q, BB and CC and redesignated the remaining subsections accordingly, substituted "counseling and therapy practice" for "counselor and therapist practice" at the beginning of Subsection J, added "alcohol abuse counseling, drug abuse counseling and alcohol and drug abuse counseling" at the end of Subsection J, inserted "registered mental health counselors, registered independent mental health counselors, alcohol abuse counselors, drug abuse counselors and alcohol and drug abuse counselors" near the end of Subsection K, substituted "marriage" for "marital" in Subsections N and S, added "as defined by regulation of the board" at the end of Subsection R and in the second sentence of Subsection S, substituted "married" for "marital" in the second sentence of Subsection S, substituted "registered with" for "certified by" in Subsection AA, and made stylistic changes throughout the section.

61-9A-4. License or registration required. (Repealed effective July 1, 2028.)

A. Unless licensed or registered to practice under the Counseling and Therapy Practice Act, no person shall engage in:

- (1) the practice of professional mental health counseling;
- (2) the practice of professional clinical mental health counseling;
- (3) marriage and family therapy;
- (4) professional art therapy;
- (5) counseling as a licensed mental health counselor;
- (6) counseling as a licensed associate marriage and family therapist; or
- (7) counseling as a registered independent mental health counselor.

B. Unless licensed to practice under the Counseling and Therapy Practice Act, no person shall engage in:

- (1) the practice of alcohol and drug abuse counseling;
- (2) the practice of alcohol abuse counseling;
- (3) the practice of drug abuse counseling; or
- (4) substance abuse counseling as a substance abuse associate.

History: Laws 1993, ch. 49, § 4; 1996, ch. 61, § 2; 1999, ch. 161, § 3; 2003, ch. 422, § 2; 2005, ch. 210, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2005 amendment, effective June 17, 2005, deleted "registered independent mental health counselor" in Subsection A(6); changed "registered mental health counselor" to "registered independent mental health counselor" in Subsection A(7); and changed "trainee" to "associate" in Subsection B(4).

The 2003 amendment, effective June 20, 2003, deleted "the practice of" at the end of Subsections A and B; added "the practice of" at the beginning of Paragraphs

A(1), (2), B(1) to (3); added Paragraph A(7); and substituted "trainee" for "intern" at the end of Paragraph B(4).

The 1999 amendment, effective July 1, 1999, deleted "After July 1, 1994" at the beginning of Subsection A, substituted "licensed" for "registered" in Subsection A(5), added Subsection A(6), deleted "After January 1, 1998" at the beginning of Subsection B and deleted "or registered" preceding "to practice".

The 1996 amendment, effective July 1, 1996, substituted "registration" for "certificate" in the section heading, designated the former introductory paragraph as Subsection A, substituted "registered" for "certified" near the beginning of Subsection A, redesignated former Subsections A through E as Paragraphs A(1) through A(5), and added Subsection B.

61-9A-5. Scopes of practice. (Repealed effective July 1, 2028.)

A. For the purpose of the Counseling and Therapy Practice Act, a person is practicing as a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist, registered independent mental health counselor, registered mental health counselor, licensed mental health counselor, licensed associate marriage and family therapist, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse associate if the person advertises, offers to practice, is employed in a position described as professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist, registered independent mental health counselor, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse counselor associate, or holds out to the public or represents in any manner that the person is licensed or registered to practice as a counselor or therapist enumerated in this section in this state.

B. "Practice of professional clinical mental health counseling" means the application of mental health, psychotherapeutic and human development principles through a therapeutic relationship to:

- (1) achieve the mental, emotional, physical, social, moral, educational, spiritual or career-related development and adjustment of the client throughout the client's life;
- (2) diagnose, evaluate, prevent and treat mental, emotional or behavioral disorders and associated distresses that interfere with mental health;
- (3) conduct appraisal, assessments and evaluations to establish treatment goals and objectives; and
- (4) plan, implement and evaluate treatment plans using counseling treatment interventions and strategies.

C. "Practice of professional art therapy" means the licensed practice of counseling or therapy services to individuals, families or groups, of services that use art media as a means of expression and communication to:

- (1) achieve the mental, emotional, physical, social, moral, educational, spiritual or career-related development and adjustment of the client throughout the client's life;
- (2) diagnose, evaluate, prevent and treat mental, emotional or behavioral disorders and associated distresses that interfere with mental health;
- (3) conduct appraisal, assessments and evaluations to establish treatment goals and objectives; and
- (4) plan, implement and evaluate treatment plans using counseling or therapy treatment interventions and strategies.

D. "Practice of marriage and family therapy" means the licensed practice of marriage and family therapy services delivered to persons, couples and families treated singly or in groups within the context of family systems to:

- (1) achieve the mental, emotional, physical, social, moral, educational, spiritual or career-related development and adjustment of the client throughout the client's life;
- (2) diagnose, evaluate, prevent and treat mental, emotional or behavioral disorders and associated distresses that interfere with mental health;
- (3) conduct appraisal, assessments and evaluations to establish treatment goals and objectives; and
- (4) plan, implement and evaluate treatment plans using marriage and family therapy treatment interventions and strategies.

E. "Practice of licensed professional mental health counselor, licensed mental health counselor, registered independent counselor and licensed associate marriage and family therapist under an appropriate clinical supervisor" consists of rendering counseling services, which may include evaluation, assessment, consultation, diagnosing, development of treatment plans, case management counseling referral, appraisal, crisis intervention education, reporting and record keeping to individuals, couples, families or groups as defined by rule.

F. The scopes of practice of alcohol and drug abuse counseling, or both, consists of rendering treatment and intervention services specific to alcohol and other drug use disorders to persons, couples, families or groups. The services may include evaluation, assessment, diagnosis of chemical abuse and chemical dependency disorders only, consultation, development of treatment

plans, case management-counseling, referral, appraisal, crisis intervention, education, reporting and record keeping. Nothing in this scope of practice shall be construed as preventing licensed alcohol and drug abuse counselors from providing screening and referrals for mental health disorders. However, assessment, treatment and diagnosis for such disorders is not within the scope of practice of this license. The practice of these activities will be limited to the individual's level of training, education and supervised experience. The alcohol and drug abuse counselor may provide therapeutic services that may include treatment of clients with co-occurring disorders or dual diagnosis in an integrated behavioral health setting in which a multidisciplinary team has developed a multidisciplinary treatment plan that is co-authorized by an independently licensed counselor or therapist. The treatment of a mental health disorder shall be supervised by an independently licensed counselor or therapist.

G. The scope of practice of a substance abuse associate under the supervision by an appropriate supervisor is limited to supervised work in a public or private institution. The associate may be involved in taking social histories or conducting home studies. The associate utilizes the basic problem-solving process of gathering information, assessing that information at a beginning professional level and developing an intervention plan. The associate may implement the plan and conduct follow-ups pertaining specifically to alcohol and drug abuse counseling. The associate may provide client education and assist a licensed counselor-therapist with group or individual counseling sessions. A substance abuse associate shall not practice independently as a private practitioner.

History: Laws 1993, ch. 49, § 5; 1996, ch. 61, § 3; 1999, ch. 161, § 4; 2003, ch. 422, § 3; 2005, ch. 210, § 3; 2007, ch. 166, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2007 amendment, effective June 15, 2007, permitted a drug and alcohol abuse counselor to provide therapeutic services to clients with co-occurring disorders or dual diagnosis and requires that treatment of a mental health disorder be supervised by a licensed counselor or therapist.

The 2005 amendment, effective June 17, 2005, in Subsection A, added "licensed associate marriage and family therapist", changed "substance abuse trainee" to "substance abuse associate" and deleted "registered mental health counselor"; in Subsection B, deleted "professional art therapist or marriage and family therapist"; in Subsection C, added the definition of "practice of professional art therapy"; in Subsection D, added the definition of "practice of marriage and family therapy"; in Subsection E, deleted from the defined terms "registered mental health counselor" and the word "supervision" and changed "regulation" to "rule"; in former Subsection D, deleted the definition of "practice of licensed professional mental health counselor"; in Subsection F, deleted "alcohol abuse counselors" and "drug abuse counselors"; and in Subsection G,

changed "trainee" to "associate" and provided that a substance abuse associate shall not practice independently as a private practitioner.

The 2003 amendment, effective June 20, 2003, substituted the present heading for "scope of practice"; in Subsection A, inserted "registered mental health counselor, licensed mental health counselor" near the beginning, substituted "trainee" for "intern" near the middle, "counselor trainee" for "intern" near the end, inserted "a counselor or therapist enumerated in this section" near the end; rewrote Subsection B; added Subsections C, D, E, and F.

The 1999 amendment, effective July 1, 1999, inserted "registered independent mental health counselor" twice in Subsection A and inserted "independent" preceding "drug abuse".

The 1996 amendment, effective July 1, 1996, designated the existing provisions as Subsection A, substituted "registered mental health counselor, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse intern" for "or registered mental health counselor," following "professional art therapist" twice in Subsection A, substituted "registered to practice as such" for "certified to practice as such" near the end of Subsection A, and added Subsection B.

61-9A-6. Exemptions. (Repealed effective July 1, 2028.)

A. Nothing in the Counseling and Therapy Practice Act shall be construed to prevent:

- (1) a person who is licensed, certified or regulated under the laws of this state from engaging in activities consistent with the standards and ethics of the person's profession or practice; or
- (2) an alternative, metaphysical or holistic practitioner from engaging in nonclinical activities consistent with the standards and codes of ethics of that practice.

B. Specifically exempted from the Counseling and Therapy Practice Act are:

- (1) elementary and secondary school counselors acting on behalf of their employer who are otherwise regulated;
- (2) peer counselors of domestic violence or independent-living peer counselors working under appropriate supervision in a nonprofit corporation, association or similar entity;
- (3) duly ordained, commissioned or licensed ministers of a church providing pastoral services on behalf of a church;

- (4) a person who is enrolled in an internship or practicum under appropriate supervision and is in the internship or practicum for the sole purpose of acquiring an advanced degree in mental health counseling, marriage and family therapy or art therapy or a degree in substance abuse counseling;
- (5) practitioners of Native American healing arts; and
- (6) individuals who serve as peer counselors for a twelve-step recovery program or a similar self-help chemical dependency recovery program that:
 - (a) does not offer chemical dependency treatment;
 - (b) does not charge program participants a fee; and
 - (c) allows program participants to maintain anonymity.

C. Nothing in this section shall be construed to allow an individual whose license has been lost or suspended by the New Mexico counseling and therapy practice board or the New Mexico state board of psychology examiners to avoid such loss or suspension by utilizing this exemption.

History: Laws 1993, ch. 49, § 6; 1996, ch. 61, § 4; 1999, ch. 161, § 5; 2003, ch. 422, § 4; 2003, ch. 423, § 1; 2005, ch. 210, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, deleted lay pastoral-care assistants from the list of persons who are exempt from the act in Subsection B(3).

The 2003 amendment, effective July 1, 2003, added Paragraph B(6) and Subsection C. The section was also amended by Laws 2003, ch. 422, § 4. The section is set out as amended by Laws 2003, ch. 423, § 1. See 12-1-8 NMSA 1978.

The 1999 amendment, effective July 1, 1999, substituted "a person" for "any individual" in Subsection A(1), deleted "organized training program to qualify for licensure as a counselor or therapist and is under direct supervision of a licensed counselor or therapist or other appropriate supervision, as approved by the board" in Subsection B(4), deleted Subsections B(5), B(6) and B(8)

which read: "(5) hypnotherapists certified by the American council of hypnotist examiners or the southwest hypnotherapists examining board, providing nonclinical services from July 1, 1994 to June 30, 1998"; "(6) pastoral counselors with master's or doctoral degrees who are certified by the American association of pastoral counselors from July 1, 1994 to June 30, 1998"; "(8) state employees at the discretion of the head of the employing agency" and redesignated the remaining subsections accordingly.

The 1996 amendment, effective July 1, 1996, in Subsection B, substituted "the Counseling and Therapy Practice Act" for "this act" in the introductory paragraph, deleted Paragraph (2) exempting alcohol or drug abuse counselors working under nonprofit corporations, associations or similar entities, deleted Paragraph (5) exempting students enrolled in a graduate level counselor and therapist training program, added Paragraph (4) and redesignated the existing paragraphs accordingly, and substituted "head of the employing agency" for "department secretary" at the end of Paragraph (8).

61-9A-7. Board created; members; appointment; terms; compensation. (Repealed effective July 1, 2028.)

A. There is created the "counseling and therapy practice board". The board is administratively attached to the department.

B. The board consists of seven members who are United States citizens, have been New Mexico residents for at least five years prior to their appointment and maintain New Mexico residency during their appointment. Of the seven members:

(1) five members shall be professional members, who shall be a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist, a professional art therapist and an alcohol and drug abuse counselor, licensed under the Counseling and Therapy Practice Act and shall have engaged in a counselor and therapist practice for at least five years. The professional mental health counselor shall also represent the registered independent and licensed mental health counselors; and

(2) two members shall represent the public. The public members shall not have been licensed or have practiced as counselor or therapist practitioners or in any other regulated mental health profession, nor have any significant financial interest, either direct or indirect, in the professions regulated.

C. Members of the board shall be appointed by the governor for staggered terms of four years. A member shall hold office until a successor is appointed. Vacancies shall be filled in the same manner as original appointments. No appointee shall serve more than two terms.

D. The governor may appoint professional board members from a list of nominees submitted by qualified individuals and organizations, including the New Mexico counseling association, the New Mexico association for marriage and family therapy, the New Mexico art therapy association and the alcohol and drug directors association.

E. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

F. The board shall elect annually from its membership a chair and a secretary and other officers as necessary to carry out its duties.

G. The board shall meet once a year and at other times deemed necessary. Other meetings may be called by the chair upon the written request of three members of the board. A simple majority of the board members shall constitute a quorum of the board.

H. Any member failing to attend three meetings after proper notice shall be automatically recommended for removal as a board member, unless excused by the board chair for one of the following reasons:

- (1) extenuating circumstances beyond the member's control, including illness;
- (2) prearranged activities out of town; or
- (3) other severe circumstances that do not allow a member to attend.

History: Laws 1993, ch. 49, § 7; 1996, ch. 81, § 5; 1999, ch. 161, § 6; 2003, ch. 422, § 5; 2021, ch. 93, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the composition of the counseling and therapy practice board, required board members to maintain New Mexico residency during their appointment, and reduced the number of times the board is required to meet annually; in Subsection B, after "consists of", changed "nine" to "seven", after "appointment", added "and maintain New Mexico residency during their appointment", and after "Of the", changed "nine" to "seven", and in Paragraph B(2), changed "four" to "two"; and in Subsection G, after "shall meet", changed "at least twice" to "once".

The 2003 amendment, effective June 20, 2003, in Paragraph B(1), deleted the former third sentence, that read "These members shall not hold any elected or appointed office in any professional organization of counseling, psychology or closely related field during their tenure on the board, nor shall they be school owners"; and added Subsection H.

The 1999 amendment, effective July 1, 1999, in Subsection B(2) deleted the third sentence, which read: "The initial professional members shall meet requirements for licensure and be licensed within one year after the effective date of the licensure requirements" and inserted "independent and licensed" in the last sentence, and rewrote

Subsection C which read: "All members of the board shall be appointed by the governor for staggered terms of four years, except that the initial board shall be appointed so that the terms of one professional and one public member expire June 30, 1994, the terms of one professional and one public member expire June 30, 1995, the terms of one professional and one public member expire on June 30, 1996 and the terms of one professional and one public member expire June 30, 1997. The alcohol and drug abuse counselor shall be appointed to a four-year term beginning July 1, 1996. Each member shall hold office until his successor is appointed. Vacancies shall be filled in the same manner as original appointments. No appointee shall serve more than two terms".

The 1996 amendment, effective July 1, 1996, substituted "nine members" for "eight members" twice in Subsection B, substituted "five members" for "four members" at the beginning of Paragraph B(1), inserted "and an alcohol and drug abuse counselor" in the first sentence of Paragraph B(1), deleted "four" preceding "professional members" near the beginning of the third sentence of Paragraph B(1), substituted "licensure requirements" for "Counseling and Therapy Practice Act" at the end of the third sentence of Paragraph B(1), added the second sentence in Subsection C, added "and the alcohol and drug directors association" at the end of Paragraph D, and made stylistic changes throughout the section.

61-9A-7.1. Actions of board; immunity; certain records not public records. (Repealed effective July 1, 2028.)

A. No member of the board or person working on behalf of the board shall be civilly liable or subject to civil damages for any good-faith action undertaken or performed within the proper functions of the board.

B. All written and oral communication made by a person to the board relating to actual or potential disciplinary action shall be confidential communication and are not public records for the purposes of the Public Records Act [Chapter 14, Article 3 NMSA 1978]. All data, communication and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except:

- (1) to the extent necessary to carry out the board's functions;
- (2) as needed for judicial review of the board's actions; or
- (3) pursuant to a court order issued by a court of competent jurisdiction.

C. Notwithstanding the provisions of Subsection B of this section, at the conclusion of an actual disciplinary action by the board, all data, communication and information acquired by the board relating to an actual disciplinary action taken against a person subject to the provisions of the Counseling and Therapy Practice Act shall be public records, pursuant to the provisions of the Public Records Act.

History: Laws 2005, ch. 210, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

Effective dates. — Laws 2005, ch. 210 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

61-9A-8. Department duties. (Repealed effective July 1, 2028.)

The department, with the consultation of the board, shall:

- A. process applications;
- B. conduct and review the required examinations;
- C. issue licenses and certificates of registration to applicants who meet the requirements of the Counseling and Therapy Practice Act;
- D. administer, coordinate and enforce the provisions of the Counseling and Therapy Practice Act and investigate persons engaging in practices that may violate the provisions of that act;
- E. approve the selection of primary staff assigned to the board;
- F. maintain records, including financial records; and
- G. maintain a current register of licensees and registrants as a matter of public record.

History: Laws 1993, ch. 49, § 8; 1996, ch. 61, § 6; 2003, ch. 422, § 6; 2005, ch. 210, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed former Subsection A into Subsections A and B.

The 2003 amendment, effective June 20, 2003, re-wrote Subsection D.

The 1996 amendment, effective July 1, 1996, substituted "that" for "which" preceding "may violate" in Subsection C.

61-9A-9. Board; powers and duties. (Repealed effective July 1, 2028.)

- A. The board may:
 - (1) adopt and file in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules necessary to carry out the provisions of the Counseling and Therapy Practice Act;
 - (2) select and provide for the administration of, at least, semiannual examinations for licensure;
 - (3) establish the passing scores for examinations;
 - (4) take any disciplinary action allowed by and in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and necessary to carry out the provisions of the Counseling and Therapy Practice Act;
 - (5) censure, reprimand or place a licensee or registrant on probation;
 - (6) require and establish criteria for continuing education;
 - (7) establish by rule procedures for receiving, investigating and resolving complaints;
 - (8) approve appropriate supervision, and postgraduate experience for persons seeking licensure or registration;
 - (9) provide for the issuance of licenses;
 - (10) determine eligibility of individuals for licensure or registration;
 - (11) set fees for administrative services and registration, as authorized by the Counseling and Therapy Practice Act, and authorize all disbursements necessary to carry out the provisions of that act;
 - (12) except as provided in Section 61-1-34 NMSA 1978, set fees for licenses, as authorized by the Counseling and Therapy Practice Act, and authorize all disbursements necessary to carry out the provisions of that act;
 - (13) establish criteria for supervision and supervisory requirements, including the appropriate application of technology;
 - (14) establish a code of ethics; and
 - (15) establish committees.
- B. The board may establish a standards committee for each licensed profession. The members of each standards committee shall be appointed by the board with the consent of the department and shall include at least one board member from the licensed profession and at least one public board member. The board member representing each respective profession shall chair its standards committee and the committee shall:

- (1) recommend and periodically review a code of ethics;
 - (2) review license applications and recommend approval or disapproval;
 - (3) develop criteria for supervision, including the appropriate application of technology;
- and
- (4) recommend rules.

C. Members of the standards committees or other committees may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

History: Laws 1993, ch. 49, § 9; 1996, ch. 61, § 7; 1999, ch. 161, § 7; 2003, ch. 422, § 7; 2020, ch. 6, § 25; 2021, ch. 93, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, authorized the counseling and therapy practice board to take any disciplinary action necessary to carry out the provisions of the Counseling and Therapy Practice Act, and authorized the application of technology to supervision; in Subsection A, Paragraph A(1), after "adopt", deleted "in accordance with the Uniform Licensing Act", in Paragraph A(4), after "Uniform Licensing Act", added "and necessary to carry out the provisions of the Counseling and Therapy Practice Act", and in Paragraph A(13), after "supervisory requirements", added "including the appropriate application of technology"; and in Subsection B, Paragraph B(3), after "supervision", added "including the appropriate application of technology".

The 2020 amendment, effective July 1, 2020, authorized the counseling and therapy practice board to authorize all disbursements necessary to carry out the provisions of the Counseling and Therapy Practice Act, and provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added a new Paragraph A(12) and redesignated the succeeding paragraphs accordingly.

The 2003 amendment, effective June 20, 2003, deleted "for a period not to exceed one year" in Paragraph A(5); deleted "and certificates of registration" in Paragraph A(9); deleted the former last sentence of Subsection C, that read "These members shall not hold any elected or appointed office in any professional organization of counseling, psychology or closely related field during their tenure on the standards committees."

The 1999 amendment, effective July 1, 1999, substituted "may" for "shall have the power to" in Subsection A, deleted "and regulations" following "rules" in Subsection A(1), added Subsection A(14), and inserted "or other committees" at the beginning of Subsection C.

The 1996 amendment, effective July 1, 1996, deleted "by rule" following "establish" in Paragraph A(3), rewrote Paragraph A(4), substituted "registration" for "certification" in Paragraphs A(8) and A(10), deleted "certificates of" preceding "registration" in Paragraph A(11), rewrote Paragraph A(12), deleted former Paragraph A(13) adopting rules implementing an impaired counselor and therapist practitioner treatment program, deleted former Paragraph A(14) relating to approving certain registered mental health supervisors, redesignated Paragraph A(15) as Paragraph A(13) and rewrote that paragraph, rewrote Paragraph B(1), deleted Paragraphs B(5) and B(6) relating to creating long-term professional development goals and periodically reviewing the professional code of ethics, and made stylistic changes throughout the section.

61-9A-10. Professional mental health counselor; requirements for licensure. (Repealed effective July 1, 2028.)

Effective July 1, 2007, the board will no longer license professional mental health counselors. Prior to the effective date, the board shall issue a license as a professional mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- A. has reached the age of twenty-one;
- B. holds a master's or doctoral degree in counseling or a counseling-related field from an accredited institution and has a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the mental health clinical core curriculum;
- C. demonstrates professional competency by passing the required examinations prescribed by the board;
- D. has completed one thousand client contact hours of postgraduate professional counseling experience under appropriate clinical supervision consisting of at least one hundred supervision hours; and
- E. is of good moral character with conduct consistent with the code of ethics.

History: Laws 1993, ch. 49, § 10; 1999, ch. 161, § 8; 2003, ch. 422, § 8; 2005, ch. 210, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, in Subsection B, provided that the applicant must have a total

of not less than forty-eight graduate semester hours or seventy-two quarter hours in the mental health clinical core curriculum; and in Subsection D, changed "supervision" to "clinical supervision".

The 2003 amendment, effective June 20, 2003, in Subsection B, substituted "a counseling-related field, as

defined by rule" for "an allied mental health field"; in Subsection C, substituted "the required examinations" for "an examination as".

The 1999 amendment, effective July 1, 1999, deleted "The board may approve, on a case-by-case basis,

applicants who have a master's degree or doctoral degree from non-accredited institutions" at the end of Subsection B, deleted "satisfactorily" preceding "passing" in Subsection C, and added Subsection E.

61-9A-11. Professional clinical mental health counselor; requirements for licensure. (Repealed effective July 1, 2028.)

The board shall issue a license as a professional clinical mental health counselor to a person who files a completed application and, except as provided in Section 61-1-34 NMSA 1978, pays any required fees and who submits satisfactory evidence that the applicant:

- A. has reached the age of twenty-one;
- B. holds a master's or doctoral degree in a counseling or counseling-related field, as defined by rule, from an accredited institution. The applicant shall have a master's degree and a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the mental health clinical core curriculum;
- C. demonstrates professional competency by passing the required examination as prescribed by the board;
- D. has a minimum of two years of professional clinical counseling experience, including at least three thousand clinical contact hours and at least one hundred hours of appropriate supervision. One thousand client clinical contact hours may be submitted from the applicant's internship or practicum; and
- E. observes the code of ethics.

History: Laws 1993, ch. 49, § 11; 1999, ch. 161, § 9; 2003, ch. 422, § 9; 2005, ch. 210, § 8; 2020, ch. 6, § 26; 2021, ch. 93, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a professional clinical mental health counselor; in Subsection D, after "one hundred hours of", deleted "face-to-face" and added "appropriate"; and in Subsection E, deleted "is of good moral character with conduct consistent with" and added "observes".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; in the introductory clause, after "completed application", deleted "accompanied by the" and added "and, except as provided in Section 61-1-34 NMSA 1978, pays

any"; and in Subsection B, after "The applicant", deleted "must" and added "shall".

The 2005 amendment, effective June 17, 2005, provided that the applicant's degree may include a degree in counseling and deleted the requirement that the applicant's degree be from a regionally accredited institution.

The 2003 amendment, effective June 20, 2003, rewrote Subsection B and inserted "the required" in Subsection C.

The 1999 amendment, effective July 1, 1999, substituted "no less than forty-eight graduate hours in the mental health clinical core curriculum" for "sixty graduate hours or more" and deleted "The board may approve applicants who have a master's degree or doctoral degree from nonaccredited or foreign institutions on a case-by-case basis" in Subsection B, and deleted "postgraduate" preceding "professional clinical" in Subsection D, and added Subsection E.

61-9A-11.1. Professional clinical mental health counselor; requirements for licensure. (Repealed effective July 1, 2028.)

The board shall issue a license as a professional clinical mental health counselor to any person who files a completed application accompanied by the required fees within the July 1, 2005 through July 1, 2007 period and who submits satisfactory evidence that the applicant:

- A. has reached the age of twenty-one;
- B. holds a current professional mental health counselor license;
- C. holds a master's or doctoral degree from an accredited institution;
- D. demonstrates professional competency by satisfactorily passing the required examinations as prescribed by the board;
- E. has a minimum of three thousand hours of client contact experience, including at least one hundred hours of face-to-face supervision or a minimum of ten thousand hours of client contact experience, including at least two hundred hours of face-to-face supervision; and
- F. is of good moral character with conduct consistent with the code of ethics.

History: Laws 1999, ch. 161, § 10; 2003, ch. 422, § 10; 2005, ch. 210, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed the dates of the period within which an application must be filed; changed "grandfathered professional mental health counselor license" to "current professional mental health counselor license" and deleted the former requirement that the license be applied for prior to July 1, 1994 in Subsection B; deleted the former requirement that the applicant have a total of forty-eight graduate semester or more or seventy-two quarter hours from a regionally accredited institution in Subsection C; deleted the former option to provide documentation of ten

thousand hours of client contact experience, including at least three hundred hours of face-to-face supervision of which at least one hundred hours are individual in Subsection D; and decreased the number of hours of client contact experience from five thousand to three thousand hours, decreased the number of hours of face-to-face supervision from two hundred to one hundred hours and added the alternative that experience and supervision may consist of a minimum of ten thousand hours of client contact experience, including at least two hundred hours of face-to-face supervision in Subsection E.

The 2003 amendment, effective June 20, 2003, rewrote Subsection C that formerly read "holds a master's or doctoral degree and a total of sixty graduate hours or more".

61-9A-11.2. Repealed.

Repeals. — Laws 2005, ch. 210, § 21 repealed 61-9A-11.2 NMSA 1978, as enacted by Laws 2003, ch. 422, § 11, relating to professional clinical mental health counselor requirements for licensing, effective June 17, 2005. For

provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*. For provisions of comparable present law, see 61-9A-4 NMSA 1978.

61-9A-12. Marriage and family therapist; requirements for licensure. (Repealed effective July 1, 2028.)

The board shall issue a license as a marriage and family therapist to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- A. has reached the age of twenty-one;
- B. holds a master's or doctoral degree with a focus in marriage and family therapy and meets the requirements of the marriage and family therapy core curriculum, as defined by rule, in marriage and family therapy from an accredited institution;
- C. demonstrates professional competency by passing the examinations as prescribed by the board;
- D. has a minimum of two years of postgraduate marriage and family therapy experience consisting of one thousand client contact hours and two hundred hours of appropriate clinical supervision, of which one hundred hours of such supervision was on an individual basis; and
- E. observes the code of ethics.

History: Laws 1993, ch. 49, § 12; 1999, ch. 161, § 11; 2003, ch. 422, § 12; 2005, ch. 210, § 10; 2021, ch. 93, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a marriage and family therapist; and in Subsection E deleted "is of good moral character with conduct consistent with" and added "observes".

The 2005 amendment, effective June 17, 2005, added the requirement in Subsection B that an applicant must

meet the requirements of the marriage and family therapy core curriculum and changed "supervision" to "clinical supervision" in Subsection D.

The 2003 amendment, effective June 20, 2003, in Subsection B, substituted "and" for "or" following "family therapy" and inserted "as defined by rule".

The 1999 amendment, effective July 1, 1999, inserted "or meets the requirements of the core curriculum in marriage and family therapy" in Subsection B, deleted "satisfactorily" preceding "passing" in Subsection C, and added Subsection E.

61-9A-12.1. Licensed associate marriage and family therapist or counselor; requirements for licensure. (Repealed effective July 1, 2028.)

The board shall issue a license as an associate marriage and family therapist or counselor to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- A. has reached the age of twenty-one;
- B. holds a master's or doctoral degree with a focus in marriage and family therapy or counselor from an accredited institution and meets the requirements of the marriage and family therapy or counselor core curriculum, as defined by rule;

- C. has arranged for appropriate clinical supervision, as defined by rule, to meet the requirements for a licensed associate marriage and family therapist;
- D. demonstrates professional competence by passing an examination within the applicant's discipline as prescribed by the board; and
- E. observes the code of ethics.

History: Laws 2005, ch. 210, § 11; 2021, ch. 93, § 10.
Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as

an associate marriage and family therapist or counselor; and in Subsection E deleted "is of good moral character with conduct consistent with" and added "observes".

61-9A-13. Professional art therapist; requirements for licensure. (Repealed effective July 1, 2028.)

The board shall issue a license as a professional art therapist to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- A. has reached the age of twenty-one;
- B. demonstrates professional competency by passing an examination as prescribed by the board;
- C. holds a master's or doctoral degree in art therapy, counseling or counseling-related field from an accredited institution or nationally approved art therapy program with a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the art therapy core curriculum;
- D. meets the art therapy core curriculum as defined by rule;
- E. has completed a minimum of two years post-graduate professional experience, three thousand client contact hours and one hundred hours of post-graduate experience under appropriate supervision. Seven hundred clinical client contact hours may be from the applicant's internship or practicum program beyond the requirements in Subsection C of this subsection. Supervision shall be under a New Mexico-licensed professional art therapist or certified board therapist for at least fifty percent of the working hours; and
- F. observes the code of ethics.

History: Laws 1993, ch. 49, § 13; 1999, ch. 161, § 12; 2003, ch. 422, § 13; 2005, ch. 210, § 12; 2007, ch. 166, § 2; 2021, ch. 93, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a professional art therapist; redesignated former Paragraphs A(1) through A(6) as Subsections A through F, respectively; in Subsection E, after "post-graduate", deleted "face-to-face", and after "requirements in", changed "Paragraph (3)" to "Subsection C"; in Subsection F, deleted "is of good moral character with conduct consistent with" and added "observes"; and deleted former Subsection B, which related to applicants meeting the art therapy core curriculum.

The 2007 amendment, effective June 15, 2007, eliminated educational and experience qualifications and added new qualifications in Paragraphs (3) through (5) of Subsection A.

The 2005 amendment, effective June 17, 2005, changed "either" to "one of the following" in Subsection A(3); changed "regionally accredited institution" to

"accredited institution" in Subsections A(3)(a) and (c); added a master's degree in counseling in Subsections A(3)(b) and (c); and added Subsection B to provide that effective July 1, 2005, applicants must meet the art therapy core curriculum, as defined by rule.

The 2003 amendment, effective June 20, 2003, in Paragraph C(1), inserted "from a regionally accredited institution or nationally approved art therapy program", substituted "seven hundred hours" for "six hundred hours"; in Paragraph C(2), inserted "as defined by rule", substituted "twenty-four semester hours" for "twenty-one semester hours" and "seven hundred hours" for "six hundred hours"; added Paragraph C(3); and rewrote Subsection D.

The 1999 amendment, effective July 1, 1999, substituted "six hundred" for "seven hundred" in Subsection C(1) and C(2); deleted "satisfactorily" preceding "passing" in Subsection B, deleted "The board may, on a case-by-case basis, approve applicants who hold a master's degree or a doctoral degree from non-accredited institutions" in Subsection C(1); substituted "shall" for "must" and "licensed or American art therapy association-certified" for "registered" in Subsection D; and added Subsection E.

61-9A-14. Requirements for licensed mental health counselor. (Repealed effective July 1, 2028.)

The board shall issue a license as a mental health associate to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- A. has reached the age of twenty-one;
- B. holds either a master's or doctoral degree from an accredited institution in a counseling or counseling-related field, as defined by rule and a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the core curriculum;
- C. has arranged for an appropriate clinical supervision plan and a postgraduate experience plan, as defined by rule, to meet the licensing requirements for a:
 - (1) professional art therapist;
 - (2) professional mental health counselor; or
 - (3) professional clinical mental health counselor;
- D. demonstrates professional competence by passing an examination within the applicant's discipline as prescribed by the board; and
- E. observes the code of ethics.

History: Laws 1993, ch. 49, § 14; 1999, ch. 161, § 13; 2003, ch. 422, § 14; 2005, ch. 210, § 13; 2021, ch. 93, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a mental health associate; and in Subsection E deleted "is of good moral character with conduct consistent with" and added "observes".

The 2005 amendment, effective June 17, 2005, added the provisions in Subsection B that the applicant's degree may be in counseling and that the applicant have a total of not less than forty-eight graduate semester hours or seventy-two quarter hours in the core curriculum; changed "supervision" to "clinical supervision" in Subsection C and

deleted marriage and family therapist from the list of licensing requirements in Subsection C.

The 2003 amendment, effective June 20, 2003, rewrote Subsections B and C.

The 1999 amendment, effective July 1, 1999, substituted "licensed" for "registered" in the section heading, substituted "license" for "certificate of registration" in the introductory paragraph, substituted "marriage and family therapy or art therapy or meets the educational requirements for the terminal license" for "or an allied mental health field. The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from non-accredited institutions; and" in Subsection B, and added Subsections D and E.

61-9A-14.1. Substance abuse associate; requirements for licensure. (Repealed effective July 1, 2028.)

A. Effective July 1, 2005, the board shall license as a substance abuse associate any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant as defined by rule:

- (1) observes the code of ethics;
- (2) has reached the age of twenty-one;
- (3) holds an associate degree in a counseling, counseling-related field or substance abuse-related field from an accredited institution and has a total of ninety clock hours of education and training in the fields of alcohol and drug abuse counseling; and
- (4) has arranged for an appropriate supervision plan, as defined by rule, to meet the requirements for licensure as a substance abuse associate.

B. The applicant shall also provide two letters of recommendation.

History: Laws 1996, ch. 61, § 8; 1999, ch. 161, § 14; 2003, ch. 422, § 15; 2005, ch. 210, § 14; 2021, ch. 93, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a substance abuse associate; and in Subsection A, Paragraph A(1), deleted "is of good moral character, with conduct consistent with" and added "observes".

The 2005 amendment, effective June 17, 2005, deleted former Subsection A which provided for the licensure of substance abuse trainees; changed "trainee" to "associate" in Subsections A and A(4); added a degree in counseling or substance abuse-related field and deleted the former requirement that the degree must be from a regionally accredited institution in Subsection A(3); and

deleted the former requirement in Subsection B that one letter be from a current supervisor and one letter from a current employer or one letter from a professional substance abuse colleague.

The 2003 amendment, effective June 20, 2003, rewrote the section.

The 1999 amendment, effective July 1, 1999, substituted "has reached the age of twenty-one" for "is at least eighteen years of age" in Subsection A(2), substituted "has a total of ninety clock hours of education and training in the fields of alcohol and drug abuse" for "demonstrates knowledge of a working definition of substance abuse treatment and recovery" in Subsection A(5), deleted former Subsections B, C, and D, relating to the licensing of alcohol and drug abuse counselors, alcohol abuse counselors and drug abuse counselors, and added present Subsection B.

61-9A-14.2. Alcohol and drug abuse counselor; requirements for licensure. (Repealed effective July 1, 2028.)

Effective July 1, 2005, the board shall license as an alcohol and drug abuse counselor a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant, as defined by rule:

- A. observes the code of ethics;
- B. has reached the age of twenty-one;
- C. demonstrates professional competency by passing the required examinations prescribed by the board; and
- D. has one of the following combinations of education and experience:

(1) an associate degree in counseling, a counseling-related field or a substance abuse-related field from an accredited institution, and education and training that includes two hundred seventy-six clock hours with ninety hours in each of the fields of alcohol and drug abuse counseling, six hours of professional ethics, three years and three thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and two hundred hours of appropriate supervision;

(2) a baccalaureate degree in counseling, a counseling-related field or a substance abuse-related field, as defined by rule, from an accredited institution and education and training that includes two hundred seventy-six clock hours with ninety hours in each of the fields of alcohol and drug abuse counseling and six hours of professional ethics, two years and two thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and one hundred hours of appropriate supervision; or

(3) a master's degree in counseling, a counseling-related field or a substance abuse-related field, as defined by rule, from an accredited institution, and education and training that includes two hundred seventy-six clock hours with ninety hours in each of the fields of alcohol and drug abuse counseling and six hours of professional ethics, one year and one thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and fifty hours of appropriate supervision hours.

History: Laws 1999, ch. 161, § 15; 2003, ch. 422, § 16; 2005, ch. 210, § 15; 2007, ch. 166, § 3; 2021, ch. 93, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as an alcohol and drug abuse counselor; in Subsection A, deleted "is of good moral character with conduct consistent with" and added "observes"; and in Subsection D, Paragraph D(1), after "three thousand client", deleted "contract" and added "contact", and changed "face-to-face" to "appropriate" throughout.

The 2007 amendment, effective June 15, 2007, deleted former Subsection D to eliminate the requirement that applicants provide three letters of recommendation.

The 2005 amendment, effective June 17, 2005, deleted former Subsection A, which provided for the licensure of alcohol and drug abuse counselors; added Subsection E(1) to provide for a combination of an associate degree and a minimum number of hours of education and training; added a degree in counseling and a substance abuse-related field in Subsection E(2); added a degree in a substance abuse-related field in Subsection E(3); and changed "regionally accredited institution" to "accredited institution" in Subsections E(2) and (3).

The 2003 amendment, effective June 20, 2003, rewrote the section.

61-9A-14.3. Alcohol and drug abuse counselor; requirements for grandfathered licensure. (Repealed effective July 1, 2028.)

A. Effective July 1, 2007 through July 1, 2010, the board shall license as an alcohol and drug abuse counselor a person who holds a current certified alcohol and drug abuse counselor certification issued between July 1, 1996 and July 1, 2010 and files a completed application accompanied by the required fees and submits satisfactory evidence that the applicant:

- (1) is of good moral character with conduct consistent with the code of ethics;
- (2) has reached the age of twenty-one;
- (3) has submitted evidence of having participated in a total of six thousand client contact hours and three hundred supervised face-to-face hours; and
- (4) has completed two hundred seventy-six clock hours of education or training that includes ninety hours in each area of the fields of alcohol and drug abuse counseling and six hours of training in professional ethics acquired within two years of receipt of the application.

B. An applicant who meets the requirements of Subsection A of this section will not be required to complete an examination.

History: Laws 2007, ch. 166, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

Effective dates. — Laws 2007, ch. 166 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-9A-14.4. Licensed substance abuse associates; medical assistance; reimbursement for services.

The secretary of human services shall adopt and promulgate rules to allow a behavioral health agency employing a substance abuse associate licensed in accordance with the Counseling and Therapy Practice Act to be reimbursed for the following services provided to medical assistance recipients within the licensed substance abuse associate's scope of practice under clinical supervision:

- A. providing interventions directly to individuals, couples, families and groups;
- B. employing practice theory and research findings;
- C. providing screening, assessment, consultation, development of treatment plans, case management, counseling, referral, appraisal, crisis intervention, education, reporting or recordkeeping pertaining specifically to alcohol and drug abuse counseling;
- D. providing generalist services in the role of educator, assistant or mediator;
- E. taking a social history; and
- F. conducting a home study.

History: Laws 2019, ch. 92, § 1.

Compiler's notes. — Laws 2019, ch. 92, § 1 was not enacted as part of the Counseling and Therapy Act, but was compiled there for the convenience of the user.

Effective dates. — Laws 2019, ch. 92 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-9A-15. Examinations. (Repealed effective July 1, 2028.)

A. Applicants who have met the requirements for licensure shall be scheduled for the next appropriate examinations following the approval of the application. The board shall establish the board-approved examinations application deadline and the requirements for reexamination if the applicant has failed the examinations.

B. The examinations shall cover subjects appropriate to the scope of practice as a licensed mental health counselor, a licensed associate marriage and family therapist, a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist, a professional art therapist or an alcohol and drug abuse counselor.

History: Laws 1993, ch. 49, § 15; 1996, ch. 61, § 10; 2003, ch. 422, § 17; 2005, ch. 210, § 16.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, added a licensed associate marriage and family therapist and an alcohol and drug abuse counselor in Subsection B.

The 2003 amendment, effective June 20, 2003, substituted "examinations" for "examination" throughout

the section; deleted "by rule" following "establish" and inserted "board-approved examinations"; and in Subsection B, inserted "a licensed mental health counselor".

The 1996 amendment, effective July 1, 1996, added "or a substance abuse counselor" at the end of Subsection B and made a related stylistic change.

61-9A-16. Temporary licensure. (Repealed effective July 1, 2028.)

A. Prior to examination, an applicant for licensure may obtain a temporary license to engage in any counselor and therapist practice if the person meets all of the requirements, except examination, provided for in Section 61-9A-10, 61-9A-11, 61-9A-11.1, 61-9A-12, 61-9A-12.1, 61-9A-13, 61-9A-14, 61-9A-14.1 or 61-9A-14.2 NMSA 1978. The temporary license shall be valid no more than sixty days after the results of the next examination become available. If the individual should

fail to take or pass those examinations, the temporary license shall automatically expire and the applicant will not be reissued a temporary license.

B. Notwithstanding the provisions of Subsection A of this section, as deemed necessary by the board, an applicant for licensure pursuant to the Counseling and Therapy Practice Act may be issued a temporary license for a period not to exceed six months or for a period of time necessary for the board to ensure that the applicant has met licensure requirements as set out in that act.

History: Laws 1993, ch. 49, § 16; 2003, ch. 422, § 18; 2006, ch. 5, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2006 amendment, effective May 17, 2006, added statutory references to Sections 61-9A-11.1, 61-9A-12.1, 61-9A-14.1 and 61-9A-14.2 in Subsection A and added

Subsection B to permit the board to issue temporary licenses pending a determination of an applicant's qualifications.

The 2003 amendment, effective June 20, 2003, updated the internal references and substituted "sixty days" for "thirty days" and added "and the applicant will not be reissued a temporary license" at the end.

61-9A-17 to 61-9A-21.1. Repealed.

Repeals. — Laws 1999, ch. 161, § 21 repealed 61-9A-17 to 61-9A-21.1 NMSA 1978, as enacted by Laws 1993, ch. 49, §§ 17 to 21 and Laws 1996, ch. 61, § 9, relating to licensure without examination, effective July 1, 1999. For

provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 61-9A-22 NMSA 1978.

61-9A-22. Expedited licensure by credentials. (Repealed effective July 1, 2028.)

A. The board shall issue an expedited license in the same licensure level to a person who:

- (1) files a completed application accompanied by the required fees;
- (2) submits evidence that the applicant holds a valid, unrestricted license in a counseling-related field issued by another licensing jurisdiction;
- (3) is in good standing with that licensing jurisdiction with no disciplinary action pending or brought against the applicant within the past two years;
- (4) has practiced in New Mexico for at least two years immediately prior to application; and
- (5) possesses a master's or doctoral degree in counseling or a counseling-related field from an accredited institution.

B. As soon as practicable but no later than thirty days after an out-of-state licensee files an application for a license, the board shall process the application and issue the expedited license in accordance with Section 61-1-31.1 NMSA 1978.

C. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass the required examination before applying for license renewal.

D. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

E. Applicants who do not meet the licensure by credential requirements must meet the current licensure requirements for a regular license.

History: Laws 1993, ch. 49, § 22; 1999, ch. 161, § 16; 2003, ch. 422, § 19; 2005, ch. 210, § 17; 2006, ch. 5, § 2; 2021, ch. 93, § 15; 2022, ch. 39, § 44.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure by credentials, provided that the counseling and therapy practice board shall issue an expedited license to a person who holds a valid, unrestricted license in a counseling-related field

issued by another licensing jurisdiction and the applicant has practiced in New Mexico for at least two years immediately prior to application, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal, and required the board to determine by rule, and to post on its website,

which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "Expedited"; in Subsection A, after "shall issue", deleted "a" and added "an expedited", in Paragraph A(2), after "the applicant holds", deleted "and has held for a minimum of two years a current" and added "a valid, unrestricted", after the next occurrence of "license", added "in a counseling-related field", deleted "the appropriate examining board under the law of any other state or territory of the United States, the District of Columbia or any foreign nation" and added "another licensing jurisdiction", in Paragraph A(3), after "in good standing", added "with that licensing jurisdiction", and added a new Paragraph A(4) and redesignated former Paragraph A(4) as Paragraph A(5); added new Subsections B through D and redesignated former Subsection B as Subsection E; and in Subsection E, after "current licensure requirements", added "for a regular license".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2021 amendment, effective June 18, 2021, removed discretionary language, and added mandatory language, related to the counseling and therapy practice board's power to issue a license to a person who furnishes evidence to the board that the person has been licensed by another state, territory of the United States, the District

of Columbia or another country for two years, and revised qualifications for an applicant seeking a license pursuant to this section; in the section heading, after "credentials", deleted "reciprocity"; and in Subsection A, after "The board", changed "may" to "shall", and in Paragraph A(2), after "submits", deleted "satisfactory", and changed "five" to "two", throughout.

The 2006 amendment, effective May 17, 2006, provided for the licensure of an applicant in the same licensure level as the applicant is licensed in another jurisdiction in Subsection A; required that an applicant have held for a minimum of five years a current license from another licensing jurisdiction in Paragraph (2) of Subsection A; deleted former Subsections A through E, which required an applicant to be a nationally certified counselor, certified clinical mental health counselor or therapist, clinical member of the American association for marriage and family therapy, a registered art therapist or an alcohol and drug abuse counselor; added Paragraph (3) of Subsection A to require an applicant to be in good standing with no disciplinary action within five years; and added Paragraph (4) of Subsection A to require that an applicant possess a master's or doctoral degree in counseling or a counseling-related field.

The 2005 amendment, effective June 17, 2005, added "therapist" in Subsection B; deleted "(ATR-BC)" in Subsection D; deleted the former requirement in Subsection D that the counselor has taken and passed the required examination prescribed by the board and added that the counselor must be a national certified addiction counselor level I.

The 2003 amendment, effective June 20, 2003, rewrote the section.

The 1999 amendment, effective July 1, 1999, added the second and third sentences.

61-9A-23. License and registration renewal. (Repealed effective July 1, 2028.)

A. Each licensee or registrant shall renew his license or registration biennially by submitting a renewal application on a form provided by the board and complying with all renewal requirements. The board may establish a method to provide for staggered biennial terms. The board may authorize license renewal for one year to establish this renewal cycle and charge the proportionate license fee for that period.

B. If a license is not renewed by the expiration date, the licensee or registrant will be considered expired and will refrain from practicing. The licensee or registrant may renew within a thirty-day grace period by submitting payment of the renewal fee, late fee and compliance with all renewal requirements. Upon receipt of payment and continuing education unit requirements, the licensee and registrant may resume practice. Failure to receive renewal notice and application for renewal of license from the board does not excuse a licensed professional counselor from the requirements for renewal.

C. If continuing education unit requirements are not completed within the licensing period and by the expiration date, the license or registration will be considered expired and the licensee or registrant will refrain from practicing.

D. Failure to renew a license or registration within thirty days from the date of expiration as provided in this section shall cause the license or registration to automatically expire. Reinstatement of an expired license or registration will require the licensee to reapply, submit all necessary documentation and meet all current standards for licensure.

E. A person licensed or registered under the Counseling and Therapy Practice Act who wishes to retire from practice shall notify the board in writing before the expiration of his current license or registration. If, within a period of five years from the year of retirement, the licensee or registrant wishes to resume practice, the licensee or registrant shall so notify the board in writing, and upon giving proof of completing such continuing education as prescribed by rule of the board and the payment of a renewal license fee and reinstatement fee, his license or registration shall be restored to him in full effect.

History: Laws 1993, ch. 49, § 23; 1999, ch. 161, § 17; 2003, ch. 422, § 20; 2005, ch. 210, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed the grace period from ninety days to thirty days and changed "ceu" to "continuing education unit" in Subsection B; changed "registrant" to "registration" and provided that the licensee or registrant shall refrain from practicing if the continuing education requirement is not met within the period in Subsection C; deleted the former provision in Subsection D that a license or registration is automatically suspended if the holder fails to apply for renewal within ninety days after the renewal deadline and that a license or registration could be renewed after the grace period upon payment of an additional fee; and

changed the grace period within which to renew a license or registration from ninety days to thirty days after expiration and provides that a license or registration may be renewed upon submission of all necessary documentation and meeting all standards for licensure in Subsection D.

The 2003 amendment, effective June 20, 2003, rewrote the section.

The 1999 amendment, effective July 1, 1999, substituted "registration" for "certificate" throughout the section, deleted "certificate" following "license or" one time in Subsection A and four times in Subsection C, substituted "registrations" for "certificates" and "and" for "the" in Subsection B, inserted "or registration" preceding "so suspended" in Subsection C, substituted "registered" for "certified", inserted "or registrant", and substituted "rule" for "regulation" in Subsection D.

61-9A-24. License and registration fees. (Repealed effective July 1, 2028.)

Applicants for licensure or registration shall pay fees set by the board in an amount not to exceed:

- A. for application for initial licensure, seventy-five dollars (\$75.00), which is not refundable;
- B. for licensure or renewal as a professional mental health counselor or registered independent mental health counselor, three hundred dollars (\$300);
- C. for licensure or renewal as a clinical professional mental health counselor, marriage and family therapist or professional art therapist, four hundred twenty dollars (\$420);
- D. for registration or renewal as a registered mental health counselor, licensed mental health counselor, licensed associate marriage and family therapist or registered independent mental health counselor, two hundred forty dollars (\$240);
- E. for all examinations, seventy-five dollars (\$75.00) or, if a national examination is used, an amount that shall not exceed the national examination costs by more than twenty-five percent;
- F. for a duplicate or replacement license or registration, twenty-five dollars (\$25.00);
- G. for failure to renew a license or registration within the allotted grace period, a late penalty fee not to exceed one hundred dollars (\$100);
- H. reasonable administrative fees; and
- I. for licensure, registration or renewal as an alcohol and drug abuse counselor, an alcohol abuse counselor, a drug abuse counselor or a substance abuse associate, two hundred dollars (\$200).

History: Laws 1993, ch. 49, § 24; 1996, ch. 61, § 11; 1999, ch. 161, § 18; 2003, ch. 422, § 21; 2005, ch. 210, § 19.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, added licensed associate marriage and family therapist in Subsection D and changed "intern" to "associate" in Subsection I.

The 2003 amendment, effective June 20, 2003, in Subsection B, inserted "or registered independent mental health counselor" and in Subsection D, inserted "licensed mental health counselor".

The 1999 amendment, effective July 1, 1999, inserted "professional" preceding "mental" in Subsection C.

The 1996 amendment, effective July 1, 1996, substituted "registration" for "certification" in the introductory paragraph and in Subsections A and D, inserted "professional" preceding "art therapist" in Subsection C, inserted "or registered independent mental health counselor" in Subsection D, substituted "registration" for "certificate" in Subsections F and G, and added Subsection I and made related stylistic changes.

61-9A-25. Fund created. (Repealed effective July 1, 2028.)

- A. There is created in the state treasury the "counseling and therapy practice board fund".
- B. All money received by the board under the Counseling and Therapy Practice Act shall be deposited with the state treasurer for credit to the counseling and therapy practice board fund. The state treasurer shall invest the fund as all other state funds are invested and income from investment of the fund shall be credited to the fund. Balances in the fund remaining at the end of any fiscal year shall not revert to the general fund.
- C. Money in the counseling and therapy practice board fund is appropriated to the board and shall be used for the purpose of carrying out the provisions of the Counseling and Therapy Practice Act.

History: Laws 1993, ch. 49, § 25.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

61-9A-26. License and registration; denial, suspension and revocation. (Repealed effective July 1, 2028.)

A. In accordance with the procedures established by the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, suspend or revoke any license or registration held or applied for under the Counseling and Therapy Practice Act, or take any other action provided for in the Uniform Licensing Act, upon grounds that the licensee, registrant or applicant:

- (1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure any license or registration provided for in the Counseling and Therapy Practice Act;
- (2) is adjudicated mentally incompetent by regularly constituted authorities;
- (3) is found guilty of a felony or misdemeanor involving moral turpitude;
- (4) is found guilty of unprofessional or unethical conduct;
- (5) has illicitly been using any controlled substances, as defined in the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978], or using a mood-altering substance or alcoholic beverage to an extent or in a manner dangerous to the licensee, registrant or applicant or any other person or the public or to an extent that the use impairs the licensee's, registrant's or applicant's ability to perform the work of a counselor or therapist practitioner;
- (6) has violated any provision of the Counseling and Therapy Practice Act or regulations adopted by the board;
- (7) is grossly negligent in practice as a professional counselor or therapist practitioner;
- (8) willfully or negligently divulges a professional confidence;
- (9) demonstrates marked incompetence in practice as a professional counselor or therapist practitioner;
- (10) has had a license or registration to practice as a counselor, therapist or other mental health practitioner revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee or registrant similar to acts described in this subsection;
- (11) knowingly and willfully practices beyond the scope of practice, as defined by the board; or
- (12) uses conversion therapy on a minor.

B. A certified copy of the record of conviction shall be conclusive evidence of such conviction.

C. Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board, and shall conform to the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for such copy.

D. A person who violates any provision of the Counseling and Therapy Practice Act is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978.

E. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

History: Laws 1993, ch. 49, § 26; 1996, ch. 61, § 12; 1999, ch. 161, § 19; 2005, ch. 210, § 20; 2017, ch. 132, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2017 amendment, effective June 16, 2017, prohibited the use of conversion therapy on a minor, provided that the counseling and therapy practice board may deny, revoke or suspend the license issued by the board if the licensee uses conversion therapy on a minor, and defined certain terms as used in this section; in Subsection A, Paragraph A(5), after "manner dangerous to", deleted "himself" and added "the licensee, registrant or applicant", and after "the use impairs", deleted "his" and added "the licensee's, registrant's or applicant's", and added Paragraph A(12); and added Subsection E.

The 2005 amendment, effective June 17, 2005, provided in Subsection A(5) that disciplinary action may be taken if the licensee, registrant or applicant has illicitly used a controlled substance or has used a mood-altering substance.

The 1999 amendment, effective July 1, 1999, added "fines and reprimand" to the section heading, substituted

"a" for "any" and inserted "may fine or reprimand a license or registrant" in Subsection A, and deleted "as a professional counselor or therapist practitioner" at the end of Subsections (7) and (9).

The 1996 amendment, effective July 1, 1996, in Subsection A, substituted "registration" for "certificate" in the introductory paragraph and in Paragraphs (1) and (10), inserted "or take any other action provided for in the Uniform Licensing Act," in the introductory paragraph, substituted "a counselor or therapist practitioner" for "a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist or registered mental health counselor safely to the public" at the end of Paragraph (5), added "adopted by the board" at the end of Paragraph (6), substituted "counselor, therapist or other mental health practitioner" for "professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, art therapist or registered mental health counselor" in Paragraph (10), and added Paragraph (11); and made stylistic changes throughout the section.

61-9A-27. Privileged communications. (Repealed effective July 1, 2028.)

A. No counselor and therapist practitioner, or person providing appropriate supervision for licensure or certification requirements or supervisee participating in obtaining supervision and practice experience requirements, shall be examined in nonjudicial proceedings without the consent of his client concerning any communication made by the client to him or any advice given to the client in the course of professional employment; nor shall the secretary, stenographer or clerk of a counselor and therapist practitioner or supervisor be examined without the consent of the counselor and therapist practitioner concerning any fact, the knowledge of which he acquired in that capacity; nor shall any person who has participated in any counseling practice conducted under the supervision of a person authorized by law to conduct such practice, including group therapy sessions, be examined concerning any knowledge gained during the course of the practice without the consent of the person to whom the testimony sought relates.

B. No counselor and therapist practitioner shall disclose any information acquired from a person who has consulted him in his professional capacity, unless:

(1) he has the written consent of the client or in the case of death or disability the client's personal representative or any other person authorized to sue for the beneficiary of any insurance policy on the client's life, health or physical condition;

(2) such communication reveals the contemplation of a crime or act harmful to the person's self or others;

(3) the information acquired indicates the person was the victim or subject of a crime required to be reported by law; or

(4) the person, family or legal guardian waives the privilege by bringing charges against a counselor and therapist practitioner as defined in the Counseling and Therapy Practice Act.

C. Nothing in this section shall be construed to prohibit a counselor and therapist practitioner from disclosing information in a court hearing concerning matters of adoption, child abuse, child neglect or other matters pertaining to the welfare of children as stipulated in the Children's Code [Chapter 32A NMSA 1978] or to those matters pertaining to citizens as protected under the Adult Protective Services Act [27-7-14 through 27-7-31 NMSA 1978].

History: Laws 1993, ch. 49, § 27.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

ANNOTATIONS

Applicability of privilege in a child abuse and neglect case was not required to be addressed because the

clear language of Rule 11-504 NMRA, this section, and Section 61-31-24 NMSA 1978 permits disclosure. *State ex rel. Children, Youth & Families Dep't*, 2000-NMCA-035, 128 N.M. 813, 999 P.2d 1045, cert. denied, 129 N.M. 207, 4 P.3d 35.

61-9A-28. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Counseling and Therapy Practice Act.

History: Laws 1993, ch. 49, § 28.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

61-9A-29. Injunctive proceedings. (Repealed effective July 1, 2028.)

The board may apply for an injunction in a district court to enjoin any person from committing any act prohibited by the Counseling and Therapy Practice Act.

History: Laws 1993, ch. 49, § 29.

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

61-9A-30. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The counseling and therapy practice board is terminated on July 1, 2027 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Counseling and Therapy Practice Act until July 1, 2028. Effective July 1, 2028, the Counseling and Therapy Practice Act is repealed.

History: Laws 1993, ch. 49, § 30; 1999, ch. 161, § 20; 2005, ch. 208, § 6; 2015, ch. 119, § 8; 2021, ch. 50, § 5; 2021, ch. 99, § 2.

The 2021 amendment, effective June 18, 2021, extended the sunset date for the counseling and therapy practice board and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

Laws 2021, ch. 50, § 5 and Laws 2021, ch. 99, § 2, both effective June 18, 2021, enacted identical amendments to

this section. The section was set out as amended by Laws 2021, ch. 99, § 2. See 12-1-8 NMSA 1978.

The 2015 amendment, effective June 19, 2015, extended the termination date for the counseling and therapy practice board to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

ARTICLE 10

Osteopathic Medicine

Sec.

61-10-1. Repealed.
61-10-1.1. Repealed.
61-10-1.2. Repealed.
61-10-2. Repealed.
61-10-3. Repealed.
61-10-4. Repealed.
61-10-5. Repealed.
61-10-5.1. Repealed.
61-10-6. Repealed.
61-10-6.1. Repealed.
61-10-7. Repealed.
61-10-7.1. Repealed.
61-10-8. Repealed.
61-10-9. Repealed.
61-10-10. Repealed.
61-10-11. Repealed.
61-10-11.1. Repealed.
61-10-11.2. Repealed.

Sec.

61-10-11.3. Repealed.
61-10-11.4. Repealed.
61-10-11.5. Repealed.
61-10-11.6. Repealed.
61-10-12. Repealed.
61-10-13. Repealed.
61-10-14. Repealed.
61-10-15. Repealed.
61-10-15.1. Repealed.
61-10-16. Repealed.
61-10-16.1. Repealed.
61-10-17. Repealed.
61-10-18. Repealed.
61-10-19. Repealed.
61-10-20. Repealed.
61-10-21. Repealed.
61-10-22. Repealed.

61-10-1. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10-1 NMSA 1978, as enacted by Laws 1955, ch. 42, § 1, relating to the definition of osteopathic medicine and surgery,

effective July 1, 2016. For provisions of former section, see the 2015 NMSA 1978 on NMSAOneSource.com.

61-10-1.1. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-1.1, as enacted by Laws 2016, ch. 90, § 1, relating to short title,

effective July 1, 2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-1.2. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-1.2, as enacted by Laws 2016, ch. 90, § 2, relating to definitions,

effective July 1, 2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-2. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-2, as enacted by Laws 1974, ch. 78, § 16, relating to criminal offender's character evaluation, effective July 1, 2022. For

provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-3. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-3, as enacted by Laws 1933, ch. 117, § 2, relating to license,

effective July 1, 2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-4. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-4, as enacted by Laws 1933, ch. 117, § 3, relating to other schools not affected, effective July 1, 2022. For provisions

of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-5. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-5, as enacted by Laws 1933, ch. 117, § 4, relating to board of osteopathic medicine, appointment, terms, meetings,

membership, examinations, duties, powers, effective July 1, 2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-5.1. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-5.1, as enacted by Laws 2016, ch. 90, § 21, relating to board communication, protected actions, effective July 1, 2022.

For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-6. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-6, as enacted by Laws 1933, ch. 117, § 5, relating to licensure, requirements, effective July 1, 2022. For provisions

of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-6.1. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-6.1, as enacted by Laws 1989, ch. 371, § 3, relating to fees,

effective July 1, 2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-7. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-7, as enacted by Laws 1977, ch. 155, § 1, relating to temporary license, qualifications, effective July 1, 2022. For

provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-7.1. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-7.1, as enacted by Laws 2019, ch. 184, § 2, relating to temporary licensure exemption, out-of-state osteopathic

physicians, out-of-state sports teams, effective July 1, 2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-8. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-8, as enacted by Laws 1933, ch. 117, § 6, relating to professional

education, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-9. Repealed.

Repeals. — Laws 1989, ch. 371, § 9 repealed 61-10-9 NMSA 1978, as amended by Laws 1975, ch. 296, § 6,

relating to standards for colleges of osteopathic medicine and surgery, effective June 16, 1989.

61-10-10. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-10, as enacted by Laws 1933, ch. 117, § 8, relating to examination,

effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11, as enacted by Laws 1933, ch. 117, § 9, relating to license

issued, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.1. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.1, as enacted by Laws 2016, ch. 90, § 19, relating to telemedicine license, effective July 1, 2022. For provisions

of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.2. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.2, as enacted by Laws 2016, ch. 90, § 22, relating to osteopathic physician assistant, licensure, scope of authority,

registration of supervision, change of supervision, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.3. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.3, as enacted by Laws 2016, ch. 90, § 23, relating to osteopathic physician assistants, inactive license, effective

July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.4. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.4, as enacted by Laws 2016, ch. 90, § 24, relating to osteopathic physician assistants, exemption from licensure,

effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.5. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.5, as enacted by Laws 2016, ch. 90, § 25, relating to responsibility,

effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.6. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.6, as enacted by Laws 2019, ch. 19, § 9, relating to supervision of psychologist in the prescribing of psychotropic

medication by osteopathic physician, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-12. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-12, as enacted by Laws 1933, ch. 117, § 10, relating to license without examination, effective July 1, 2022. For

provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-13. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10-13 NMSA 1978, as enacted by Laws 1933, ch. 117, § 11, relating to display of licenses and renewal thereof, effective

July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10-14. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-14, as enacted by Laws 1933, ch. 117, § 12, relating to privileges and obligations, presence on hospital staffs, intent of

act, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-15. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-15, as enacted by Laws 1933, ch. 117, § 13, relating to refusal and revocation of license, effective July 1, 2022. For

provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-15.1. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-15.1, as enacted by Laws 2016, ch. 90, § 20, relating to licensure, summary suspension, summary restriction,

grounds, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-16. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-16, as enacted by Laws 1933, ch. 117, § 14, relating to

penalties, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-16.1. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-16.1, as enacted by Laws 2016, ch. 90, § 18, relating to practicing without license, penalty, effective July 1, 2022.

For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-17. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-17, as enacted by Laws 1933, ch. 117, § 15, relating to records,

effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-18. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-18, as enacted by Laws 1933, ch. 117, § 16, relating to no additional power conferred on prior licensees, effective July 1,

2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-19. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-19, as enacted by Laws 1971, ch. 140, § 1, relating to renewal of license, certificate, fee, effective July 1, 2022. For

provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-20. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-20, as enacted by Laws 1971, ch. 140, § 2, relating to postgraduate educational requirements, effective July 1, 2022.

For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-21. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-21, as enacted by Laws 1945, ch. 79, § 7, relating to failure to comply, cancellation of license, reinstatement, temporary

cancellation at licensee's request, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-22. Repealed.

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-22, as enacted by Laws 1979, ch. 36, § 2, relating to termination of agency life, delayed repeal, effective July 1, 2022.

For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

ARTICLE 10A**Osteopathic Physicians' Assistants**

Sec.

61-10A-1. Repealed.

61-10A-2. Repealed.

61-10A-3. Repealed.

61-10A-4. Repealed.

61-10A-4.1. Repealed.

Sec.

61-10A-4.2. Repealed.

61-10A-4.3. Repealed.

61-10A-5. Repealed.

61-10A-6. Repealed.

61-10A-7. Repealed.

61-10A-1. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-1 NMSA 1978, as enacted by Laws 1979, ch. 26, § 1, relating to the short title, effective July 1, 2016. For provisions

of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-2. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-2 NMSA 1978, as enacted by Laws 1979, ch. 26, § 2, relating to definitions, effective July 1, 2016. For provisions

of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-3. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-3 NMSA 1978, as enacted by Laws 1979, ch. 26, § 3, relating to administration of act, effective July 1, 2016. For

provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-4. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-4 NMSA 1978, as enacted by Laws 1979, ch. 26, § 4, relating to licensure as osteopathic physician assistant, scope of authority, annual registration of employment, and

employment change, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-4.1. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-4.1 NMSA 1978, as enacted by Laws 1989, ch. 9, § 8, relating

to fees, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-4.2. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-4.2 NMSA 1978, as enacted by Laws 1997, ch. 187, § 12, relating to inactive license, effective July 1, 2016. For

provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-4.3. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-4.3 NMSA 1978, as enacted by Laws 1997, ch. 187, § 13, relating to exemption from licensure, effective July 1, 2016. For

provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-5. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-5 NMSA 1978, as enacted by Laws 1979, ch. 26, § 5, relating to denial, suspension or revocation, effective July 1, 2016.

For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-6. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-6 NMSA 1978, as enacted by Laws 1979, ch. 26, § 6, relating to rules and regulations, effective July 1, 2016. For

provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-7. Repealed.

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-7 NMSA 1978, as enacted by Laws 1979, ch. 26, § 7, relating to responsibility, effective July 1, 2016. For provisions

of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

ARTICLE 11

Pharmacy

Sec.

- 61-11-1. Short title. (Repealed effective July 1, 2024.)
- 61-11-1.1. Legislative findings; purpose of act. (Repealed effective July 1, 2024.)
- 61-11-2. Definitions. (Repealed effective July 1, 2024.)
- 61-11-3. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)
- 61-11-4. Board created; members; qualifications; terms; vacancies; removal. (Repealed effective July 1, 2024.)
- 61-11-5. Board meetings; quorum; officers; bonds; expenses. (Repealed effective July 1, 2024.)
- 61-11-6. Powers and duties of board. (Repealed effective July 1, 2024.)
- 61-11-6.1. Criminal background checks. (Repealed effective July 1, 2024.)
- 61-11-6.2. Prior authorization request form; development. (Repealed effective July 1, 2024.)
- 61-11-7. Drug dispensation; limitations. (Repealed effective July 1, 2024.)
- 61-11-8. Drug records to be kept. (Repealed effective July 1, 2024.)
- 61-11-9. Qualifications for licensure as a pharmacist by examination. (Repealed effective July 1, 2024.)
- 61-11-9.1. Surety bonds. (Repealed effective July 1, 2024.)
- 61-11-10. Reciprocal licensure. (Repealed effective July 1, 2024.)
- 61-11-11. Pharmacist intern; qualifications for licensure. (Repealed effective July 1, 2024.)
- 61-11-11.1. Pharmacy technician; qualifications; duties. (Repealed effective July 1, 2024.)
- 61-11-12. License fees. (Repealed effective July 1, 2024.)
- 61-11-13. Renewal; revocation. (Repealed effective July 1, 2024.)
- 61-11-14. Pharmacy licensure; classes of licenses; requirements; fees; revocation. (Repealed effective July 1, 2024.)

Sec.

- 61-11-14.1. Nonresident pharmacy licensure; toll-free telephone service. (Repealed effective July 1, 2024.)
- 61-11-15. Pharmacies; sale of drugs; supervision requirements. (Repealed effective July 1, 2024.)
- 61-11-16. Pharmacies; equipment required. (Repealed effective July 1, 2024.)
- 61-11-17. Display of license. (Repealed effective July 1, 2024.)
- 61-11-18. State license; actions authorized. (Repealed effective July 1, 2024.)
- 61-11-18.1. Reports to board. (Repealed effective July 1, 2024.)
- 61-11-18.2. Audit of pharmacy records. (Repealed effective July 1, 2024.)
- 61-11-19. Fund established; disposition; method of payment. (Repealed effective July 1, 2024.)
- 61-11-20. Disciplinary proceedings; Uniform Licensing Act. (Repealed effective July 1, 2024.)
- 61-11-21. Licensing of pharmacists and pharmacies required. (Repealed effective July 1, 2024.)
- 61-11-22. Exemptions from act. (Repealed effective July 1, 2024.)
- 61-11-23. Construction of laws relating to drugs. (Repealed effective July 1, 2024.)
- 61-11-24. Violations; penalties. (Repealed effective July 1, 2024.)
- 61-11-25. Power to enjoin violations. (Repealed effective July 1, 2024.)
- 61-11-26. Licensure under previous law. (Repealed effective July 1, 2024.)
- 61-11-27. Transfer of funds. (Repealed effective July 1, 2024.)
- 61-11-28. Uniform Licensing Act. (Repealed effective July 1, 2024.)
- 61-11-29. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

61-11-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 11 NMSA 1978 may be cited as the "Pharmacy Act".

History: 1953 Comp., § 67-9-33, enacted by Laws 1969, ch. 29, § 1; 1997, ch. 131, § 1.

Delayed repeals. — For delayed repeal of this section, *see* 61-11-29 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "Chapter 61, Article 11 NMSA 1978" for "This act".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of pharmacist who accurately fills prescription for harm resulting to user, 44 A.L.R.5th 393.

61-11-1.1. Legislative findings; purpose of act. (Repealed effective July 1, 2024.)

A. The legislature finds that the practice of pharmacy in New Mexico is a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest. The legislature finds further that it is a matter of public interest and concern that the practice of pharmacy as defined in the Pharmacy Act merit and receive the confidence of the public, and that only qualified persons be permitted to engage in the practice of pharmacy so that the quality of drugs and related devices distributed in New Mexico is ensured.

B. The purpose of the Pharmacy Act is to promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy, including the licensure of pharmacists and pharmacist interns and registration of pharmacy technicians; the licensure, control and regulation of all sites or persons, in or out of state, who distribute, manufacture or sell drugs or devices used in the dispensing and administration of drugs in New Mexico; and the regulation and control of such other materials as may be used in the diagnosis, treatment and prevention of injury, illness or disease of a patient or other person.

History: Laws 1997, ch. 131, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

ANNOTATIONS

Standard of care required of retail pharmacists in filling prescriptions for controlled substances.

— Where the personal representative of decedent's estate brought a lawsuit, asserting claims of negligence and negligence per se, against the pharmacy that dispensed certain Schedule II drugs to decedent, who died from an overdose of physician-prescribed medications, the district

court erred in granting the pharmacy's motion for summary judgment, because the pharmacy's motion did not establish a prima facie case of entitlement to judgment as a matter of law as to the standard of care or the pharmacy's compliance with the standard, and even if the pharmacy had met that burden, plaintiff's expert affidavit sufficed to establish a genuine dispute of material fact concerning these material issues, and dismissal of the pharmacy from the case was improper because the motion did not demonstrate the pharmacy's entitlement to summary judgment on the separate claim of negligence per se. *Oakey v. May Maple Pharmacy, Inc.*, 2017-NMCA-054, cert. denied.

61-11-2. Definitions. (Repealed effective July 1, 2024.)

As used in the Pharmacy Act:

A. "administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner;

B. "board" means the board of pharmacy;

C. "compounding" means preparing, mixing, assembling, packaging or labeling a drug or device as the result of a licensed practitioner's prescription or for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing. "Compounding" also includes preparing drugs or devices in anticipation of a prescription based on routine, regularly observed prescribing patterns;

D. "confidential information" means information in the patient's pharmacy records accessed, maintained by or transmitted to the pharmacist or communicated to the patient as part of patient counseling and may be released only to the patient or as the patient directs; or to those licensed practitioners and other authorized health care professionals as defined by regulation of the board when, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being; or to other persons authorized by law to receive the information, regardless of whether the information is on paper, preserved on microfilm or stored on electronic media;

E. "consulting pharmacist" means a pharmacist whose services are engaged on a routine basis by a hospital or other health care facility and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations;

F. "custodial care facility" means a nursing home, retirement care, mental care or other facility that provides extended health care;

G. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription or is restricted to use by licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

- (1) "Caution: federal law prohibits dispensing without prescription.";
- (2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or
- (3) "RX only";

H. "device" means an instrument, apparatus, implement, machine, contrivance, implant or similar or related article, including a component part or accessory, that is required by federal law to bear the label, "Caution: federal or state law requires dispensing by or on the order of a physician.";

I. "dispense" means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient;

J. "distribute" means the delivery of a drug or device other than by administering or dispensing;

K. "drug" means:

(1) an article recognized as a drug in an official compendium or its supplement that is designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(2) an article intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in humans or other animals;

(3) an article, other than food, that affects the structure or a function of the body of humans or other animals; and

(4) an article intended for use as a component of an article described in Paragraph (1), (2) or (3) of this subsection;

L. "drug regimen review" includes an evaluation of a prescription and patient record for:

- (1) known allergies;
- (2) rational therapy contraindications;
- (3) reasonable dose and route of administration;
- (4) reasonable directions for use;
- (5) duplication of therapy;
- (6) drug-drug interactions;
- (7) adverse drug reactions; and
- (8) proper use and optimum therapeutic outcomes;

M. "electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment;

N. "hospital" means an institution that is licensed as a hospital by the department of health;

O. "labeling" means the process of preparing and affixing a label to a drug container exclusive of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged prescription drug or device; and which label includes all information required by federal or state law or regulations adopted pursuant to federal or state law;

P. "licensed practitioner" means a person engaged in a profession licensed by a state, territory or possession of the United States who, within the limits of the person's license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition;

Q. "manufacturing" means the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes packaging or repackaging, labeling or relabeling and the promotion and marketing of the drugs or devices. "Manufacturing" also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, licensed practitioners or other persons;

R. "nonprescription drugs" means nonnarcotic medicines or drugs that may be sold without a prescription and are prepackaged for use by a consumer and are labeled in accordance with the laws and regulations of the state and federal governments;

S. "nonresident pharmacy" means any pharmacy located outside New Mexico that ships, mails or delivers, in any manner, drugs into New Mexico;

T. "outsourcing facility" means a facility at one geographic location or address that engages in the compounding of sterile drugs, is licensed by the board and, in accordance with board rules, is currently registered with the United States food and drug administration as an outsourcing facility;

U. "patient counseling" means the oral communication by the pharmacist of information to a patient or the patient's agent or caregiver regarding proper use of a drug or device;

V. "person" means an individual, corporation, partnership, association or other legal entity;

W. "pharmaceutical care" means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems;

X. "pharmacist" means a person who is licensed as a pharmacist in this state;

Y. "pharmacist in charge" means a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel;

Z. "pharmacy" means a place of business licensed by the board where drugs are compounded or dispensed and pharmaceutical care is provided;

AA. "pharmacist intern" means a person licensed by the board to train under a pharmacist;

BB. "pharmacy technician" means a person who is registered to perform repetitive tasks not requiring the professional judgment of a pharmacist;

CC. "practice of pharmacy" means the evaluation and implementation of a lawful order of a licensed practitioner; the dispensing of prescriptions; the participation in drug and device selection or drug administration that has been ordered by a licensed practitioner, drug regimen reviews and drug or drug-related research; the administering or prescribing of dangerous drug therapy; the provision of patient counseling and pharmaceutical care; the responsibility for compounding and labeling of drugs and devices; the proper and safe storage of drugs and devices; and the maintenance of proper records;

DD. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or the licensed practitioner's agent to the pharmacist, including electronic transmission or indirectly by means of a written order signed by the prescriber, that bears the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

EE. "repackager" means a person that repackages a drug, including a medicinal gas, and that, in accordance with board rules, has a valid registration as a drug establishment with the United States food and drug administration;

FF. "significant adverse drug event" means a drug-related incident that may result in harm, injury or death to the patient;

GG. "third-party logistics provider" means a person that provides or coordinates warehousing or other logistics services of a product in interstate commerce on behalf of a manufacturer, wholesale distributor or dispenser of a product but which person does not take ownership of the product nor have responsibility to direct the sale or disposition of the product; and

HH. "wholesale drug distributor" means a person engaged in the wholesale distribution of prescription drugs, including own-label distributors, private-label distributors, jobbers, brokers, manufacturers' warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution.

History: 1953 Comp., § 67-9-34, enacted by Laws 1969, ch. 29, § 2; 1977, ch. 253, § 68; 1988, ch. 6, § 1; 1992, ch. 19, § 1; 1997, ch. 131, § 3; 1999, ch. 298, § 3; 2001, ch. 50, § 3; 2019, ch. 98, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2019 amendment, effective June 14, 2019, defined "outsourcing facility", "repackager", and "third-party logistics provider" as used in the Pharmacy Act, and made certain technical amendments; added new Subsection T and redesignated former Subsections T through CC as Subsections U through DD, respectively; in Subsection Z,

after "place of business", added "licensed by the board"; added new Subsection EE and redesignated former Subsection DD as Subsection FF; added new Subsection GG and redesignated former Subsection EE as Subsection HH; and in Subsection HH, after "including", deleted "manufacturers, repackers".

The 2001 amendment, effective June 15, 2001, inserted "the administering or prescribing of dangerous drug therapy" in Subsection BB.

The 1999 amendment, effective June 18, 1999, added Subsection G(3).

The 1997 amendment, effective June 20, 1997, rewrote this section to the extent that a detailed comparison is impracticable.

The 1992 amendment, effective May 20, 1992, added all of the present language of Subsection C following "dosage form"; deleted "holding a current active certificate" following "a pharmacist" in Subsection D; substituted "department of health" for "health and environment department" in Subsection I; deleted "and includes doctors of medicine, osteopathy, dentistry, podiatry and veterinary medicine" at the end of Subsection K; added present Subsections L, M, and N; redesignated former Subsections L through P as present Subsections O through S; substituted "license" for "certificate of registration" in present Subsection P; deleted former Subsection Q defining "proprietary preparation" or "patent medicine"; substituted "distributor" for "dealer" near the end of present Subsection Q; redesignated former Subsection R as present Subsection T; inserted "manufacturing, repackaging" and "the reconstitution or preparation of intravenous admixtures" in present Subsection S; added Subsections U and V; and made minor stylistic changes throughout the section.

The 1988 amendment, effective May 18, 1988, inserted "Device" near the end of Subsection E; substituted "Paragraph (1), (2) or (3) of this subsection" for "Paragraphs (1), (2) or (3)" and corrected a misspelling in Subsection G(4); substituted "licensed by any state, territory or possession of the United States" for "licensed by the state" in Subsection K; and made minor stylistic changes.

ANNOTATIONS

Duty of consulting pharmacist to a nursing facility. — Where the nurse of a nursing home improperly transcribed a doctor's prescription, which resulted in the death of the decedent; defendant had a pharmacy consultant agreement with the nursing home in which defendant agreed to be responsible for the general supervision of the pharmaceutical products and pharmacy services provided by the nursing home and a pharmacy services agreement to purchase pharmacy products and services for the nursing home; both agreements expressly provided that the agreements did not confer any benefits on third parties and that a failure to perform by defendant created imminent jeopardy to patient safety; the nursing home did not notify defendant of the change in the decedent's prescription; the decedent was not a third-party beneficiary of the agreements between defendant and the nursing home; and defendant had no duty to control the nurse or to monitor patients outside a monthly review which defendant had conducted prior to the change in the decedent's prescription, defendant was not liable to the decedent for breach of contract or for negligence. *Thompson v. Potter*, 2012-NMCA-014, 268 P.3d 57.

"Licensed practitioner". — In view of the specific exception from licensing requirements granted to students, interns and residents, Subsection K (now see Subsection P) should be viewed as allowing prescriptions written by residents or interns to be filled by pharmacists outside the hospital in which the resident or intern is serving. 1971 Op. Att'y Gen. No. 71-93.

Nature of outlet. — Whether an outlet is wholesale or retail depends on the manner in which it does business. 1957-58 Op. Att'y Gen. No. 58-219.

"Person". — The health and environment department (now department of health) is not a "person" within the meaning of Subsection L (now see Subsection U) and is therefore not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons §§ 1, 2, 8, 9, 10, 14, 15, 98, 100.

28 C.J.S. Drugs and Narcotics § 8 et seq.

61-11-3. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Pharmacy Act.

History: 1953 Comp., § 67-9-34.1, enacted by Laws 1974, ch. 78, § 17.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

61-11-4. Board created; members; qualifications; terms; vacancies; removal. (Repealed effective July 1, 2024.)

A. There is created the "board of pharmacy". The board shall be administratively attached to the regulation and licensing department. The board consists of nine members, each of whom shall be a citizen of the United States and a resident of New Mexico.

B. Five members shall be pharmacists appointed by the governor for staggered terms of five years each from lists submitted to the governor by the New Mexico pharmaceutical association, which lists contain the names of two pharmacists residing in each of the five pharmacy districts. Appointments of pharmacist members shall be made for five years or less each and made in such a manner that the term of one pharmacist member expires on July 1 of each year. One pharmacist

member shall be appointed from each pharmacy district. A pharmacist member of the board shall have been actively engaged in the pharmaceutical profession in this state for at least three years immediately prior to his appointment and shall have had a minimum of eight years of practical experience as a pharmacist. A vacancy shall be filled by appointment by the governor for the unexpired term from lists submitted by the New Mexico pharmaceutical association to the governor. Pharmacist members shall reside in the district from which they are appointed.

C. Three members of the board shall be appointed by the governor to represent the public. The public members of the board shall not have been licensed as pharmacists or have any significant financial interest, whether direct or indirect, in the profession regulated. A vacancy in a public member's term shall be filled by appointment by the governor for the unexpired term. Initial appointments of public members shall be made for staggered terms of five years or less and made in such a manner that not more than two public members' terms shall expire on July 1 of each year.

D. One member of the board shall be a pharmacist appointed at large from a list submitted to the governor by the New Mexico society of health systems pharmacists. The member shall be appointed by the governor to a term of five years. A vacancy in the member's term shall be filled by appointment by the governor for the unexpired term from a list submitted to the governor by the New Mexico society of health systems pharmacists.

E. There are created five pharmacy districts as follows:

(1) northeast district, which shall be composed of the counties of Colfax, Guadalupe, Harding, Los Alamos, Mora, Quay, Rio Arriba, Sandoval, San Miguel, Santa Fe, Taos, Torrance and Union;

(2) northwest district, which shall be composed of the counties of McKinley, San Juan, Valencia and Cibola;

(3) central district, which shall be composed of the county of Bernalillo;

(4) southeast district, which shall be composed of the counties of Chaves, Curry, De Baca, Eddy, Lea and Roosevelt; and

(5) southwest district, which shall be composed of the counties of Catron, Dona Ana, Grant, Hidalgo, Lincoln, Luna, Otero, Sierra and Socorro.

F. A board member shall not serve more than two full terms, consecutive or otherwise.

G. A board member failing to attend three consecutive regular meetings is automatically removed as a member of the board.

H. The governor may remove a member of the board for neglect of a duty required by law, for incompetency or for unprofessional conduct and shall remove a board member who violates a provision of the Pharmacy Act.

History: 1953 Comp., § 67-9-35, enacted by Laws 1969, ch. 29, § 3; 1979, ch. 266, § 1; 1985, ch. 126, § 1; 1991, ch. 189, § 15; 1997, ch. 131, § 4; 2003, ch. 408, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A; and deleted "One of the pharmacist members shall be appointed for a term ending July 1, 1970 and one pharmacist member shall be appointed for a term ending on July 1 of each of the following four years. Thereafter," following "five pharmacy districts" near the middle of Subsection B.

The 1997 amendment, effective June 20, 1997, substituted "One pharmacist member shall be appointed from each" for "Not more than one pharmacist member shall come from a" in the fourth sentence of Subsection B; in Subsection C, inserted "be appointed by the governor to" in the first sentence, substituted "profession" for "occupation" in the second sentence, made stylistic changes in the third sentence, and substituted "public" for "board" in the fourth sentence; in Subsection D, in the first sentence, substituted "a pharmacist appointed" for "a hospital

pharmacist selected" and substituted "health systems" for "hospital", in the second sentence, substituted "The" for "On July 1, 1985, the governor shall appoint a hospital pharmacist member to the board for at term expiring July 1, 1990 and successors to the hospital pharmacist" and substituted "a term" for "terms", and, in the third sentence, substituted "member's" for "hospital pharmacist member" and "health systems" for "hospital"; and deleted former Subsection I relating to appointment of a board member in the event of a vacancy on the board.

The 1991 amendment, effective June 14, 1991, substituted "nine members" for "seven members" in Subsection A; in Subsection C, substituted "Three members" for "One member" at the beginning of the first sentence, deleted the former third sentence which read "On July 1, 1979, the governor shall appoint a public member to the board for a term expiring July 1, 1984, and successors to the public member shall be appointed by the governor to terms of five years" and added the final sentence; and made related and minor stylistic changes in Subsections B and C.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 28 C.J.S. Drugs and Narcotics § 8 et seq.

61-11-5. Board meetings; quorum; officers; bonds; expenses. (Repealed effective July 1, 2024.)

A. The board shall annually elect a chairman, vice chairman and secretary-treasurer from its membership.

B. The board shall meet at least once every three months. Special meetings may be called by the chairman and shall be called upon the written request of two or more members of the board. Notification of special meetings shall be made by certified mail unless the notice is waived by the entire board and noted in the minutes. Notice of all regular meetings shall be made by regular mail at least ten days prior to the meeting, and copies of the minutes of all meetings shall be mailed to each board member within forty-five days after any meeting.

C. A majority of the board constitutes a quorum.

D. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: 1953 Comp., § 67-9-36, enacted by Laws 1969, ch. 29, § 4; 1997, ch. 131, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 1997 amendment, effective June 20, 1997, deleted former Subsection D relating to the execution of a bond by members and employees of the board, and redesignated Subsection E as Subsection D.

ANNOTATIONS

Board of pharmacy may select whomever it chooses as secretary, as there is no compulsion that the secretary so chosen be required to have only that job; the state pharmaceutical association can appoint the same man or woman if it so chooses. 1953-54 Op. Att'y Gen. No. 53-5776.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 28 C.J.S. Drugs and Narcotics § 8 et seq.

61-11-6. Powers and duties of board. (Repealed effective July 1, 2024.)

A. The board shall:

(1) promulgate rules in accordance with the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the provisions of the Pharmacy Act in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

(2) provide for examinations of applicants for licensure as pharmacists;

(3) provide for the issuance and renewal of licenses for pharmacists;

(4) require and establish criteria for continuing education as a condition of renewal of licensure for pharmacists;

(5) provide for the issuance and renewal of licenses for pharmacist interns and for their training, supervision and discipline;

(6) provide for the licensing of retail pharmacies, nonresident pharmacies, wholesale drug distributors, drug manufacturers, hospital pharmacies, nursing home drug facilities, industrial and public health clinics and all places where dangerous drugs are stored, distributed, dispensed or administered and provide for the inspection of the facilities and activities;

(7) enforce the provisions of all laws of the state pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs or cosmetics and their standards of strength and purity;

(8) conduct hearings upon charges relating to the discipline of a registrant or licensee or the denial, suspension or revocation of a registration or a license in accordance with the Uniform Licensing Act;

(9) cause the prosecution of any person violating the Pharmacy Act, the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] or the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];

(10) keep a record of all proceedings of the board;

(11) make an annual report to the governor;

(12) appoint and employ, in the board's discretion, a qualified person who is not a member of the board to serve as executive director and define the executive director's duties and

responsibilities; except that the power to deny, revoke or suspend any license or registration authorized by the Pharmacy Act shall not be delegated by the board;

(13) appoint and employ inspectors necessary to enforce the provisions of all acts under the administration of the board, which inspectors shall be pharmacists and have all the powers and duties of peace officers;

(14) provide for other qualified employees necessary to carry out the provisions of the Pharmacy Act;

(15) have the authority to employ a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to the pharmacy profession and to fix the compensation to be paid to the attorney; provided, however, that the attorney shall be compensated from the money of the board, including that provided for in Section 61-11-19 NMSA 1978;

(16) register and regulate qualifications, training and permissible activities of pharmacy technicians;

(17) provide a registry of all persons licensed as pharmacists or pharmacist interns in the state;

(18) promulgate rules that prescribe the activities and duties of pharmacy owners and pharmacists in the provision of pharmaceutical care, emergency prescription dispensing, drug regimen review and patient counseling in each practice setting;

(19) promulgate, after approval by the New Mexico medical board and the board of nursing, rules and protocols for the prescribing of dangerous drug therapy, including vaccines and immunizations, and the appropriate notification of the primary or appropriate physician of the person receiving the dangerous drug therapy; and

(20) have the authority to authorize emergency prescription dispensing.

B. The board may:

(1) delegate its authority to the executive director to issue temporary licenses as provided in Section 61-11-14 NMSA 1978;

(2) provide by rule for the electronic transmission of prescriptions; and

(3) delegate its authority to the executive director to authorize emergency prescription dispensing procedures during civil or public health emergencies.

History: 1953 Comp., § 67-9-37, enacted by Laws 1969, ch. 29, § 5; 1972, ch. 84, § 55; 1977, ch. 62, § 1; 1979, ch. 293, § 1; 1983, ch. 165, § 1; 1992, ch. 19, § 2; 1997, ch. 131, § 6; 2001, ch. 50, § 4; 2005, ch. 152, § 5; 2022, ch. 39, § 45.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of pharmacy is required to follow the provisions of the State Rules Act when promulgating rules; in Subsection A, Paragraph A(1), deleted "adopt, amend or repeal rules and regulations necessary" and added "promulgate rules in accordance with the provisions of the State Rules Act", in Paragraph A(18), deleted "adopt" and added "promulgate", and after "rules", deleted "and regulations", and in Paragraph A(19), deleted "adopt" and added "promulgate"; and in Subsection B, Paragraph B(2), after "provide by", deleted "regulation" and added "rule".

The 2005 amendment, effective June 17, 2005, provided in Subsection A(18) that the board shall adopt rules and regulations concerning the provision of emergency prescription dispensing; added Subsection A(20) to permit the board to authorize emergency prescription dispensing; and added Subsection B(3) to permit the board to delegate its authority to the executive director to authorize emergency prescription dispensing procedures during emergencies.

The 2001 amendment, effective June 15, 2001, in Subsection A, deleted "annual" preceding "renewal" in Paragraphs (4) and (5), and added Paragraph (19).

The 1997 amendment, effective June 20, 1997, re-wrote Subsection A; redesignated former Subsections B through H as Paragraphs A(2) through A(8), respectively; deleted former Subsection I relating to minor violations of the Pharmacy Act; redesignated former Subsections J through P as Paragraphs A(9) through A(15), respectively; deleted former Subsection Q relating to rules and regulations regarding supportive personnel; redesignated former Subsection R as Paragraph A(18); and added Subsection B.

The 1992 amendment, effective May 20, 1992, substituted "nonresident pharmacies, wholesale drug distributors" for "wholesale drug dealers" near the beginning of Subsection F and inserted "or administered" near the end of that subsection; inserted "Device" in Subsection J; added Subsections Q and R; and made minor stylistic changes throughout the section.

ANNOTATIONS

Board constitutional. — The board is well founded in the police power of the state and cannot be attacked as being unconstitutional. 1959-60 Op. Att'y Gen. No. 60-126.

Constitutionality of regulating nonresident dealers. — This provision gives the board power to license, regulate and impose a reasonable license fee on resident and nonresident wholesale drug dealers and manufacturers distributing their products in the state, and such action will not violate the United States constitution. 1971 Op. Att'y Gen. No. 71-49.

Powers of board. — The board of pharmacy has power to make bylaws, rules and regulations necessary for the

protection of the public in the field of pharmacy and may employ chemists, inspectors, agents and clerical administrative help for the proper conduct of its business. 1953-54 Op. Att'y Gen. No. 53-5776.

Jurisdiction over hospital pharmacies. — The board of pharmacy exercises the same powers over pharmacies or drug dispensaries operated by a hospital as it does over any other drug store or pharmacy, etc., operated within the state. 1959-60 Op. Att'y Gen. No. 60-126.

Presence of pharmacist. — Under broad grant of authority given the board for the protection of public health and welfare, it may promulgate a regulation requiring that a registered pharmacist must be on duty in a drug store from the opening hour of the drug store until the closing hour. 1961-62 Op. Att'y Gen. No. 61-85.

Sharing office space. — The pharmaceutical association and the state board of pharmacy could maintain offices under the same roof and within the same office space,

but they would be required to separate their expenditures for rent and clerical help. 1953-54 Op. Att'y Gen. No. 53-5776.

Inspector. — Inspector appointed under former law, in the performance of duties, was empowered with all of the powers and duties of law enforcement officers of the state, within which powers was the right to carry such weapons as the occasion appeared to require. 1965 Op. Att'y Gen. No. 65-93.

An inspector has all of the authority granted to municipal, county and state law enforcement officers, including the power to obtain search warrants in all cases concerning the violation or violations of the pharmacy laws of the state of New Mexico. 1953-54 Op. Att'y Gen. No. 53-5865 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 28 C.J.S. Drugs and Narcotics § 8 et seq.

61-11-6.1. Criminal background checks. (Repealed effective July 1, 2024.)

A. The board may adopt rules that provide for criminal background checks for all new licensees to include:

- (1) requiring criminal history background checks of applicants for licensure pursuant to the Pharmacy Act;
- (2) requiring applicants for licensure to be fingerprinted;
- (3) providing for an applicant who has been denied licensure to inspect or challenge the validity of the background check record;
- (4) establishing a fingerprint and background check fee not to exceed seventy-five dollars (\$75.00) to be paid by the applicant; and
- (5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks.

History: Laws 2007, ch. 79, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

Effective dates. — Laws 2007, ch. 79, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-11-6.2. Prior authorization request form; development. (Repealed effective July 1, 2024.)

A. On or before January 1, 2014, the board shall jointly develop with the insurance division of the public regulation commission a uniform prior authorization form that, notwithstanding any other provision of law, a prescribing practitioner in the state shall use to request prior authorization for coverage of prescription drugs. The uniform prior authorization form shall:

- (1) not exceed two pages;
- (2) be made electronically available on the web site of the insurance division and on the web site of each health insurer, plan or health maintenance organization that uses the form;
- (3) be developed with input received from interested parties pursuant to at least one public meeting; and
- (4) take into consideration the following:

(a) any existing prior authorization forms that the federal centers for medicare and medicaid services or the human services department has developed; and

(b) any national standards pertaining to electronic prior authorization for prescription drugs.

B. As used in this section, "prescribing practitioner" means a person that is licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978].

History: Laws 2013, ch. 170, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

Effective dates. — Laws 2013, ch. 170 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

61-11-7. Drug dispensation; limitations. (Repealed effective July 1, 2024.)

A. The Pharmacy Act does not prohibit:

(1) a hospital or state or county institution or clinic without the services of a staff pharmacist from acquiring and having in its possession a dangerous drug for the purpose of dispensing if it is in a dosage form suitable for dispensing and if the hospital, institution or clinic employs a consulting pharmacist, and if the consulting pharmacist is not available, the withdrawal of a drug from stock by a licensed professional nurse on the order of a licensed practitioner in such amount as needed for administering to and treatment of a patient;

(2) the extemporaneous preparation by a licensed professional nurse on the order of a licensed practitioner of simple solutions for injection when the solution may be prepared from a quantity of drug that has been prepared previously by a pharmaceutical manufacturer or pharmacist and obtained by a hospital, institution or clinic in a form suitable for the preparation of the solution;

(3) the sale of nonnarcotic, nonpoisonous or nondangerous nonprescription medicines or preparations by nonregistered persons or unlicensed stores when sold in their original containers;

(4) the sale of drugs intended for veterinary use; provided that if the drugs bear the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian", the drug may be sold or distributed only as provided in Subsection A of Section 26-1-15 NMSA 1978, by a person possessing a license issued by the board pursuant to Subsection B of Section 61-11-14 NMSA 1978;

(5) the sale to or possession or administration of topical ocular pharmaceutical agents by licensed optometrists who have been certified by the board of optometry for the use of the agents;

(6) the sale to or possession or administration of oral pharmaceutical agents as authorized in Subsection A of Section 61-2-10.2 NMSA 1978 by licensed optometrists who have been certified by the board of optometry for the use of the agents;

(7) pharmacy technicians from providing assistance to pharmacists;

(8) a pharmacist from prescribing dangerous drug therapy, including vaccines and immunizations, under rules and protocols adopted by the board after approval by the New Mexico medical board and the board of nursing;

(9) a pharmacist from exercising the pharmacist's professional judgment in refilling a prescription for a prescription drug, unless prohibited by another state or federal law, without the authorization of the prescribing licensed practitioner, if:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) the pharmacist is unable to contact the licensed practitioner after reasonable effort;

(c) the quantity of prescription drug dispensed does not exceed a seventy-two-hour supply;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without authorization and that authorization of the licensed practitioner is required for future refills; and

(e) the pharmacist informs the licensed practitioner of the emergency refill at the earliest reasonable time; or

(10) the possession, storage, distribution, dispensing, administration or prescribing of an opioid antagonist in accordance with the provisions of Section 24-23-1 NMSA 1978.

B. All prescriptions requiring the preparation of dosage forms or amounts of dangerous drugs not available in the stock of a hospital, institution or clinic or a prescription requiring compounding shall be either compounded or dispensed only by a pharmacist.

History: 1953 Comp., § 67-9-38, enacted by Laws 1969, ch. 29, § 6; 1973, ch. 173, § 1; 1977, ch. 30, § 4; 1992, ch. 19, § 3; 1995, ch. 20, § 9; 1997, ch. 131, § 7; 2001, ch. 50, § 5; 2016, ch. 45, § 2; 2016, ch. 47, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

Cross references. — For provisions of the New Mexico Drug, Device and Cosmetic Act, 26-1-1 NMSA 1978 et seq.

For provisions of the Controlled Substances Act, see 30-31-1 NMSA 1978 et seq.

The 2016 amendment, effective March 4, 2016, amended the Pharmacy Act to allow the possession, storage, distribution, dispensing, administration or prescribing of an opioid antagonist in accordance with the provisions of Section 24-23-1 NMSA 1978; in Subsection A, Paragraph (1), deleted "any" and added "a", after "in its possession", deleted "any" and added "a", after "the withdrawal of", deleted "any" and added "a", and after "treatment of", deleted "his" and added "a", in Paragraph (4), after "provided that if", deleted "such" and added "the", in Paragraph (5), after "for the use of", deleted "such" and added "the"; in Paragraph (6), after "for the use of", deleted "such" and added "the", in Paragraph (8), after "New Mexico", added "medical", after "board", deleted "of medical examiners", and after the semicolon, deleted "or", in Paragraph (9), in the introductory sentence, after "exercising", deleted "his" and added "the pharmacist's", and added Paragraph (10).

Laws 2016, ch. 45, § 2 and Laws 2016, ch. 47, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2016, ch. 47, § 2. See 12-1-8 NMSA 1978.

The 2001 amendment, effective June 15, 2001, in Subsection A, deleted the former designation for Paragraph (2), thereby making those provisions a part of Paragraph (1), added Paragraph A(8), and renumbered the remaining paragraphs accordingly.

The 1997 amendment, effective June 20, 1997, in Subsection A, in Paragraph (1), substituted "if" for "provided"

and substituted "if" for "provided that", substituted "pharmacy technicians" for "supportive personnel" in Paragraph (8), and added Paragraph (9) and made related stylistic changes; and substituted "requiring" for "necessitating" in Subsection B.

The 1995 amendment, effective July 1, 1995, deleted "diagnostic" preceding "pharmaceutical" in Paragraph A(6), added Paragraph A(7), and redesignated former Paragraph A(7) as Paragraph A(8).

The 1992 amendment, effective May 20, 1992, substituted "nonprescription medicines" for "patent or proprietary medicines" in Subsection A(4), made statutory reference substitutions in Subsection A(5), added Subsection A(7), and made minor stylistic changes throughout the section.

ANNOTATIONS

Hospital or clinic pharmacy must be licensed and registered, and except in limited situations prescriptions must be filled by a registered pharmacist. 1961-62 Op. Att'y Gen. No. 61-52.

Hospital in which a pharmacy dispenses drugs must be licensed and registered. 1959-60 Op. Att'y Gen. No. 60-126.

The health and environment department (now department of health) is not a "person" within the meaning of Section 61-11-2 NMSA 1978 and is not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 23.

Constitutionality of statute regulating sale or dispensation of medicines or drugs in original package, 54 A.L.R. 744.

"Proprietary or patent medicine," what substances or commodities are within provision as to, in statute or ordinance, 76 A.L.R. 1207.

Original unbroken package, what constitutes, 113 A.L.R. 964.

61-11-8. Drug records to be kept. (Repealed effective July 1, 2024.)

Records shall be kept by all persons licensed pursuant to the Pharmacy Act of all dangerous drugs, their receipt, withdrawal from stock and use or other disposal. The records shall be open to inspection by the board or its agents, and the licensee shall be responsible for the maintenance of the records in proper form.

History: 1953 Comp., § 67-9-39, enacted by Laws 1969, ch. 29, § 7; 1972, ch. 84, § 56; 1997, ch. 131, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "persons licensed pursuant to the Pharmacy Act" for "hospitals, institutions or clinics" in the first sentence

and substituted "the licensee" for "both the pharmacist in charge and the hospital, institution or clinic" in the second sentence.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons §§ 69, 229.

61-11-9. Qualifications for licensure as a pharmacist by examination. (Repealed effective July 1, 2024.)

- A. An applicant for licensure as a pharmacist by examination shall:
- (1) have reached the age of majority and not be addicted to the use of drugs or alcohol;
 - (2) be a graduate of a school or college of pharmacy approved by the board;
 - (3) have not less than one year of experience under the direction of a pharmacist in accordance with the programs of supervised training established by regulation of the board;
 - (4) pass an examination approved by the board; and
 - (5) pass an examination approved by the board, which examination shall be based on federal and state drug laws and regulations.
- B. Any person who is a graduate of a foreign school of pharmacy may be eligible for licensure as a pharmacist upon successful completion of an equivalency examination program approved by the board.
- C. The board shall issue a license when the applicant's application has been filed with and approved by the board and the applicant has paid the required fees and has met the requirements of this section.

History: 1953 Comp., § 67-9-40, enacted by Laws 1969, ch. 29, § 8; 1973, ch. 32, § 1; 1992, ch. 19, § 4; 1997, ch. 131, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

Cross references. — For age of majority, see 28-6-1 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "licensure" for "registration" in the section heading and in the introductory language of Subsection A; in Subsection A, substituted "alcohol" for "alcoholic liquors" in Paragraph (1), rewrote Paragraph (2), in Paragraph (4), substituted "approved" for "prepared and administered" and deleted "which examination shall be based on the subjects and minimum grading standards as set forth in the bylaws of the national association of boards of pharmacy" following "board", and substituted "approved" for "prepared and administered" in Paragraph (5); in Subsection B, substituted "approved by the board" for "and an examination on New Mexico laws and board regulations" and deleted the second sentence, which read: "The board shall adopt regulations that define the content of the examinations"; and rewrote Subsection C.

The 1992 amendment, effective May 20, 1992, substituted "be a graduate of" for "hold a degree in pharmacy

from" in Subsection A(2), made minor stylistic changes in Subsection A(4), added Subsection A(5), added present Subsection B, redesignated former Subsection B as present Subsection C, and substituted "issue a license" for "issue him a certificate of registration" and "passed the required examinations" for "passed an examination" in Subsection C.

ANNOTATIONS

No "right" exists in anyone to be licensed by the board of pharmacy unless the applicant complies with applicable statutes, rules and regulations. 1957-58 Op. Att'y Gen. No. 58-219.

Proof of qualifications. — Since under former law the applicant was to "submit to the board of pharmacy proof of his qualifications," the board could set the type of proof required in order to determine whether there was compliance with the law, and it could investigate the proof submitted for that purpose. 1955-56 Op. Att'y Gen. No. 55-6188.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 75.

28 C.J.S. Drugs and Narcotics § 29 et seq.

61-11-9.1. Surety bonds. (Repealed effective July 1, 2024.)

- A. The board may require surety bonds or other equivalent means of security, as approved by the board, that are provided by a third party such as insurance, an irrevocable letter of credit or funds deposited in a trust account or financial institution, to secure payment for any administrative or judicial penalties that may be imposed by the board or the state and for any penalties or costs required by board rule or disciplinary action.
- B. Surety bonds or other equivalent means of security as approved by the board and required in this section shall apply to initial applicants or renewal applicants as a condition for obtaining or maintaining licensure as a drug manufacturer, nonresident pharmacy, wholesale drug distributor, outsourcing facility, repackager or third-party logistics provider.
- C. The board shall set by rule the amount and conditions of the surety bond or other equivalent means of security authorized in this section.
- D. The board may waive the surety bond or other requirements of this section if it determines that it is in the best interest of the public to do so. Such waivers may be granted under conditions established by board rule.

E. Manufacturers distributing their own products that have been licensed or approved by the food and drug administration and pharmacy warehouses that are engaged only in intracompany transfers are exempt from this section.

F. A separate surety bond or other equivalent means of security is not required for each company's separate locations or for affiliated companies or groups when such separate locations or affiliated companies or groups are required to apply for or renew their drug manufacturer, nonresident pharmacy, wholesale drug distributor, outsourcing facility, repackager or third-party logistics provider license with the board.

History: Laws 2007, ch. 79, § 4; 2019, ch. 98, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2019 amendment, effective June 14, 2019, added new license categories for which surety bonds are required, subject to the existing provision that multiple locations or affiliated companies do not need to provide separate surety bonds; in Subsection B, after "maintaining

licensure as a", added "drug manufacturer", after "wholesale drug distributor", added "outsourcing facility, repackager or third-party logistics provider"; and in Subsection F, after "renew their", added "drug manufacturer, nonresident pharmacy", and after "wholesale", added "drug", after "distributor", added "outsourcing facility, repackager or third-party logistics provider".

61-11-10. Reciprocal licensure. (Repealed effective July 1, 2024.)

The board may issue a license, with or without examination, to a person who:

A. is licensed as a pharmacist by examination in another state that under equivalent conditions will grant reciprocal licensure to persons licensed as pharmacists by examination in this state; and

B. produces evidence satisfactory to the board that he has the age, education, experience and qualifications required of applicants for licensure by examination under the provisions of the Pharmacy Act. Any person who was registered by examination in another state prior to May 20, 1940 is required to satisfy only those requirements in existence in this state at the time he was registered in the other state.

History: 1953 Comp., § 67-9-41, enacted by Laws 1969, ch. 29, § 9; 1997, ch. 131, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "licensure" for "registration" in the section heading

and throughout the section; substituted "licensed" for "registered" throughout the section; substituted "license" for "certificate of registration" in the introductory language; and made a stylistic change in Subsection A.

61-11-11. Pharmacist intern; qualifications for licensure. (Repealed effective July 1, 2024.)

The classification of pharmacist intern is established. An applicant for licensure as a pharmacist intern shall:

A. be not less than eighteen years of age and not be addicted to the use of drugs or alcohol;

B. have satisfactorily completed educational requirements established by rules of the board in a school or college of pharmacy approved by the board; and

C. meet other requirements established by regulation of the board.

History: 1953 Comp., § 67-9-42, enacted by Laws 1969, ch. 29, § 10; 1997, ch. 131, § 11; 2019, ch. 98, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2019 amendment, effective June 14, 2019, changed certain licensure requirements for pharmacist interns; and in Subsection B, after "satisfactorily completed", deleted "not less than thirty semester hours or

the equivalent thereof" and added "educational requirements established by rules of the board".

The 1997 amendment, effective June 20, 1997, substituted "licensure" for "registration" in the section heading and throughout the section; rewrote the introductory language; added the language beginning "and not be" in Subsection A; and in Subsection B, inserted "school or" and substituted "approved by the board" for "accredited by the American council on pharmaceutical education".

61-11-11.1. Pharmacy technician; qualifications; duties. (Repealed effective July 1, 2024.)

A. The classification of pharmacy technician is established. An applicant for registration as a pharmacy technician shall:

- (1) be at least eighteen years of age and not addicted to drugs or alcohol;
- (2) complete initial training as required by regulations of the board that includes on-the-job and related education commensurate with the tasks to be performed by the pharmacy technician; and
- (3) if the potential duties of the pharmacy technician will include the preparation of sterile products, complete an additional one hundred hours of experiential training as required by regulations of the board.

B. Permissible activities for pharmacy technicians under the supervision of a pharmacist include:

- (1) the preparation, mixing, assembling, packaging and labeling of medications;
- (2) processing routine orders of stock supplies;
- (3) preparation of sterile products;
- (4) filling of a prescription or medication order that entails counting, pouring, labeling or reconstituting medications; and
- (5) tasks assigned by the supervising pharmacist that do not require his professional judgment.

C. The supervising pharmacist shall observe and direct the pharmacy technician to a sufficient degree to assure the accurate completion of the activities of the pharmacy technician and shall provide a final check of all aspects of the prepared product and document the final check before dispensing.

D. The supervising pharmacist shall be responsible for the tasks performed by the pharmacist technician and subject to discipline for failure to appropriately supervise the performance of the pharmacist technician.

History: Laws 1997, ch. 131, § 12; 2005, ch. 152, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2005 amendment, effective June 17, 2005, added Subsection B(5) to provide that a pharmacy technician perform tasks assigned by the supervising pharmacist that do not require professional judgment.

61-11-12. License fees. (Repealed effective July 1, 2024.)

A. Except as provided in Section 61-1-34 NMSA 1978, an applicant for licensure as a pharmacist or pharmacist intern or registration as a pharmacy technician shall pay the following fees, which fees shall not be returnable:

- (1) for initial licensure as a pharmacist, a fee set by the board not to exceed four hundred dollars (\$400); provided that if the applicant fails a portion of an examination, reexamination is subject to the same fee as the first examination;
- (2) for initial licensure as a pharmacist intern, a fee not to exceed twenty-five dollars (\$25.00); and
- (3) for initial registration as a pharmacy technician, a fee not to exceed twenty-five dollars (\$25.00).

B. The board shall issue a license or registration to each successful applicant and enter the successful applicant's name and pertinent information in the registry maintained by the board.

C. Every registration or license shall have the seal of the board affixed and be signed by the board chair.

History: 1953 Comp., § 67-9-43, enacted by Laws 1969, ch. 29, § 11; 1972, ch. 43, § 1; 1983, ch. 165, § 2; 1989, ch. 103, § 1; 1997, ch. 131, § 13; 2020, ch. 6, § 28.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical

amendments; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

The 1997 amendment, effective June 20, 1997, rewrote this section to the extent a detailed comparison is impracticable.

The 1989 amendment, effective June 16, 1989, substituted "two hundred dollars (\$200)" for "one hundred dollars (\$100)" in Subsection A(1), and substituted "not

to exceed twenty-five dollars (\$25.00)" for "of ten dollars (\$10.00)" in Subsection A(3).

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 75.
28 C.J.S. Drugs and Narcotics § 29 et seq.

61-11-13. Renewal; revocation. (Repealed effective July 1, 2024.)

A. The renewal date for each licensee shall be the last day of the licensee's birth month, as set by rule of the board. Any person who intends to continue practice shall file an application for renewal prior to that date and, except as provided in Section 61-1-34 NMSA 1978, pay the renewal fee set by the board in an amount not to exceed one hundred fifty dollars (\$150) per year; provided, however, that the board shall prorate a renewal fee charged for a period of less than a full year. The license of a pharmacist failing to renew the pharmacist's license on or before the date set by the board shall automatically expire, and the license shall not be reinstated except upon reapplication and payment of a one hundred dollar (\$100) reinstatement fee and all delinquent renewal fees.

B. A pharmacist ceasing to be engaged in the practice of pharmacy for such period as the board determines, but not less than twelve months, is deemed to be inactive and shall have the pharmacist's license renewal so marked. A pharmacist having an inactive status shall not be reinstated to active status without either an examination or the presentation of evidence satisfactory to the board that the pharmacist has taken some form of internship or continuing education relevant to the practice of pharmacy, or both, immediately prior to the pharmacist's application for reinstatement. Pharmacists regularly engaged in teaching in an approved school or college of pharmacy, servicing, manufacturing, inspecting or other phases of the pharmaceutical profession are in active status for the purposes of this subsection.

C. Application for renewal of a pharmacist's license shall be made on forms prescribed and furnished by the board and shall indicate whether the renewal applied for will be an active or inactive license. The application, together with the renewal fee, shall be filed with the board.

D. Application for renewal of a pharmacist's license shall be accompanied by proof satisfactory to the board that the applicant has completed continuing education requirements established pursuant to Section 61-11-6 NMSA 1978.

E. An application for renewal of a certificate of registration as a pharmacy technician or license as a pharmacist intern shall be filed with the board on forms prescribed and furnished by the board and shall be accompanied by a renewal fee not to exceed twenty-five dollars (\$25.00) per year.

History: 1953 Comp., § 67-9-44, enacted by Laws 1969, ch. 29, § 12; 1977, ch. 62, § 2; 1983, ch. 165, § 3; 1989, ch. 103, § 2; 1992, ch. 19, § 5; 1997, ch. 131, § 14; 2001, ch. 50, § 6; 2020, ch. 6, § 29.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, after "prior to that date and", added "except as provided in Section 61-1-34 NMSA 1978".

The 2001 amendment, effective June 15, 2001, in Subsection A, deleted "annual" preceding "renewal date" and inserted "as set by rule of the board" in the first sentence; inserted "prior to that date" following "application for renewal", substituted "(\$150) per year" for "(\$150) prior to that date", and substituted "less than a full year" for "less than one year" in the second sentence; and substituted "before the date set by the board shall" for "before that date will", and substituted "the license shall" for "it shall" in the last sentence.

The 1997 amendment, effective June 20, 1997, deleted "Registration" preceding "Renewal" in the section

heading; in Subsection A, in the first sentence, deleted "All annual licenses for pharmacists shall expire on June 30, and commencing July 1, 1984" at the beginning of the sentence, substituted "licensee" for "registrant", and substituted "licensee's" for "registrant's", and in the third sentence, substituted "a" for "any", inserted "reapplication and" and substituted "one hundred dollar (\$100)" for "twenty-five dollar (\$25.00)" in Subsection B, substituted "A" for "Any" in the first sentence, and inserted "in an approved school or college of pharmacy" in the third sentence; in the first sentence of Subsection C, substituted "a pharmacist's license" for "pharmacists' licenses" and substituted "license" for "registration"; substituted "a pharmacist's license" for "pharmacists' licenses" in Subsection D; and in Subsection E, substituted "An application" for "Applications", inserted "as a pharmacy technician or license", and added "per year" at the end of the subsection.

The 1992 amendment, effective May 20, 1992, in Subsection A, substituted "last day of the registrant's birth month" for "registrant's birthdate" in the first sentence, substituted "than" for "then" near the end of the second sentence, and substituted all of the present language of the last sentence preceding "and it shall not be reinstated"

for "Any pharmacist failing to renew his license on or before that date shall have his license revoked".

The 1989 amendment, effective June 16, 1989, in Subsection A substituted "one hundred fifty dollars (\$150)" for "one hundred dollars (\$100)" in the second sentence; and substituted "not to exceed twenty-five dollars (\$25.00)" for "of five dollars (\$5.00)" in Subsection E.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 76.

Failure of druggist or apothecary to procure license as affecting validity of contracts, 30 A.L.R. 862, 42 A.L.R. 1226, 118 A.L.R. 646.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Stay pending review of judgment or order revoking or suspending license, 166 A.L.R. 575.

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotics or stimulant drugs, 17 A.L.R.3d 1408.

28 C.J.S. Drugs and Narcotics § 29 et seq.

61-11-14. Pharmacy licensure; classes of licenses; requirements; fees; revocation. (Repealed effective July 1, 2024.)

A. Any person who desires to operate or maintain the operation of a pharmacy or who engages in an activity in this state requiring licensure by the board shall apply to the board for the proper license and shall meet the requirements of the board and pay the fee for the license and its renewal.

B. The board shall issue the following classes of licenses that shall be defined and limited by regulation of the board:

- (1) retail pharmacy;
- (2) nonresident pharmacy;
- (3) wholesale drug distributor;
- (4) drug manufacturer;
- (5) hospital pharmacy;
- (6) industrial health clinic;
- (7) community health clinic;
- (8) department of health public health offices;
- (9) custodial care facility;
- (10) home care services;
- (11) emergency medical services;
- (12) animal control facilities;
- (13) wholesaler, retailer or distributor of veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian". Such drugs

may be sold or dispensed by any person possessing a retail pharmacy license, outsourcing facility license, repackager license, wholesale drug distributor's license or drug manufacturer's license issued by the board, without the necessity of acquiring an additional license for veterinary drugs;

- (14) returned drugs processors;
- (15) drug research facilities;
- (16) drug warehouses;
- (17) contact lens sellers;
- (18) medicinal gas repackagers;
- (19) medicinal gas sellers;
- (20) outsourcing facilities;
- (21) repackagers; and
- (22) third-party logistics providers.

C. Every application for the issuance or biennial renewal of:

(1) a license for a retail pharmacy, nonresident pharmacy, hospital pharmacy or drug research facility shall be accompanied by a fee set by the board in an amount not to exceed three hundred dollars (\$300) per year;

(2) a license for a wholesale drug distributor, drug manufacturer, drug warehouse, outsourcing facility, repackager or third-party logistics provider shall be accompanied by a fee not to exceed one thousand dollars (\$1,000) per year;

(3) a license for a custodial care facility or a returned drugs processor business shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars (\$200) per year; and

(4) a license for an industrial health clinic; a community health clinic; a department of health public health office; home care services; emergency medical services; animal control facilities; wholesaler, retailer or distributor of veterinary drugs; contact lens sellers; or medicinal gas sellers shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars (\$200) per year.

D. If it is desired to operate or maintain a pharmaceutical business at more than one location, a separate license shall be obtained for each location.

E. Each application for a license shall be made on forms prescribed and furnished by the board.

F. Any person making application to the board for a license to operate a facility or business listed in Subsection B of this section in this state shall submit to the board an application for licensure indicating:

- (1) the name under which the business is to be operated;
- (2) the address of each location to be licensed and the address of the principal office of the business;
- (3) in the case of a retail pharmacy, the name and address of the owner, partner or officer or director of a corporate owner;
- (4) the type of business to be conducted at each location;
- (5) a rough drawing of the floor plan of each location to be licensed;
- (6) the proposed days and hours of operation of the business; and
- (7) other information the board may require, including a criminal background check and financial history, provided that manufacturers distributing their own products that have been licensed or approved by the food and drug administration shall be exempt from criminal background check and financial history requirements pursuant to this section.

G. After preliminary approval of the application for a license for any facility or business listed in Paragraphs (1) through (8) and (10) through (22) of Subsection B of this section, a request for an inspection, together with an inspection fee not to exceed two hundred dollars (\$200), shall be submitted to the board for each business location, and an inspection shall be made of each location by the board or its agent.

H. Following a deficiency-free inspection, the executive director of the board may issue a temporary license to the applicant. The temporary license shall expire at the close of business on the last day of the next regular board meeting.

I. Licenses, except temporary licenses provided pursuant to Subsection H of this section, issued by the board pursuant to this section are not transferable and shall expire on the expiration date set by the board unless renewed. Any person failing to renew a license on or before the expiration date set by the board shall not have the license reinstated except upon reapplication and payment of a reinstatement fee set by the board in an amount not to exceed one hundred dollars (\$100) and all delinquent renewal fees.

J. The board, after notice and a refusal or failure to comply, may suspend or revoke any license issued under the provisions of the Pharmacy Act at any time examination or inspection of the operation for which the license was granted discloses that the operation is not being conducted according to law or regulations of the board.

K. Pharmaceutical sales representatives who carry dangerous drugs shall provide the board with a written statement from the representative's employer that describes the employer's policy relating to the safety and security of the handling of dangerous drugs and to the employer's compliance with the federal Prescription Drug Marketing Act of 1987. Pharmaceutical sales representatives are not subject to the licensing provisions of the Pharmacy Act.

History: 1953 Comp., § 67-9-45, enacted by Laws 1969, ch. 29, § 13; 1973, ch. 173, § 2; 1977, ch. 253, § 69; 1983, ch. 165, § 4; 1989, ch. 103, § 3; 1992, ch. 19, § 6; 1993, ch. 219, § 1; 1997, ch. 131, § 15; 2001, ch. 50, § 7; 2004, ch. 52, § 1; 2005, ch. 152, § 8; 2007, ch. 79, § 1; 2019, ch. 98, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

For the federal Prescription Drug Marketing Act of 1987, see 21 U.S.C. § 301, et seq.

The 2019 amendment, effective June 14, 2019, established additional classes of licenses that are regulated by the board of pharmacy, and added contact lens sellers and medicinal gas sellers to the list of licensees that are required to pay a fee not more than two hundred dollars for each license application or renewal; in the section heading, deleted "wholesale drug distribution business licensure" and added "classes of licenses"; in Subsection

A, after "pharmacy or who engages in", deleted "a wholesale drug distribution business" and added "an activity", and after "in this state", added "requiring licensure by the board"; in Subsection B, Paragraph B(13), after "pharmacy license", added "outsourcing facility license, repackager license", and added Paragraphs B(20) through B(22); in Subsection C, Paragraph C(2), after "drug warehouse", added "outsourcing facility, repackager or third-party logistics provider", and in Paragraph C(4), added "contact lens sellers; or medicinal gas sellers"; and in Subsection G, after "(10) through", deleted "(19)" and added "(22)".

The 2007 amendment, effective June 15, 2007, amended Subsection C to lower the fee for issuance or renewal of a wholesale drug distributor, drug manufacturer or drug warehouse license to \$1,000; and amended Subsection F to require all applicants for licenses to submit a criminal background check and financial history except manufacturers who distribute their own products and who are licensed or approved by the food and drug administration.

The 2005 amendment, effective June 17, 2005, added Subsections B(17) through (19) to provide for the issuance of license to contact lens sellers, medical gas repackagers and medical gas sellers respectively; provided for the biennial renewal of licenses in Subsection C; and the expiration date of licenses shall be set by the board.

The 2004 amendment, effective May 19, 2004, amended Subsection C to delete "wholesale drug distributor", "drug manufacturer" and "drug warehouse" from Paragraph (1), added new Paragraph (2) and redesignated Paragraphs (2) and (3) as Paragraphs (3) and (4) and amended Subsection K to delete the fifty dollar registration fee and add "provide the board with a written statement from the representative's employer that describes the employer's policy relating to the safety and security of the handling of dangerous drugs and to the employer's compliance with the federal Prescription Drug Marketing Act of 1987."

The 2001 amendment, effective June 15, 2001, added Paragraphs (14), (15) and (16) in Paragraph B, substituted "hospital pharmacy, drug research facility or drug warehouse" for "or hospital pharmacy" in Paragraph C(1); inserted "or a returned drugs processor business" in Paragraph C(2); substituted the specific references to Subsection B for "new retail pharmacy, hospital pharmacy, wholesale drug distributor or drug manufacturer" in Subsections F and G; inserted "except temporary licenses provided pursuant to Subsection H of this section" in Subsection I; and in Subsection K, rewrote the second sentence which formerly read "The board may charge a fee not to exceed fifty dollars (\$50.00) for registration and annual renewal."

The 1997 amendment, effective June 20, 1997, deleted "permit or" preceding "license" in two places in Subsection A; rewrote Subsection B; rewrote Subsection C; deleted "or permit" following "license" in Subsection D; deleted "permit or" preceding "license" in Subsection E; substituted "drug distributor or drug manufacturer" for "drug business or drug manufacturing" in Subsection F; designated the former undesignated last paragraph of Subsection F as Subsection G; added Subsection H and redesignated the remaining subsections accordingly; in Subsection I, deleted "and permits" following "licenses"; substituted "pursuant to" for "under"; deleted "or permit" following "license" in two places, and inserted "reapplication and"; in Subsection J, substituted "may" for "is authorized to",

deleted "or permit" following "license" in two places, and substituted "the operation" for "such place"; and added Subsection K.

The 1993 amendment, effective July 1, 1993, added present Paragraph (11) to Subsection B, renumbering former Paragraph (11) as Paragraph (12) and making a related grammatical change; and in Paragraph (3) of Subsection C, inserted "a limited drug permit issued pursuant to the provisions of Paragraph (11) of Subsection B of this section" and substituted "Paragraph (12)" for "Paragraph (11)".

The 1992 amendment, effective May 20, 1992, inserted "wholesale" in the section heading; inserted "who engages in a wholesale" in Subsection A; rewrote Subsection B(2), which formerly read: "wholesale drug dealer's license"; added present Subsection B(3); redesignated former Subsections B(3) to B(7) as present Subsections B(4) to B(8); added present Subsection B(9); redesignated former Subsections B(8) and B(9) as present Subsections B(10) and B(11); substituted "distributor's" for "dealer's" in the second sentence of Subsection B(11); substituted "distributor, nonresident pharmacy, pharmaceutical sales representative" for "dealer" in Subsection C(1); added the second sentence of Subsection G; substituted "department of health" for "health and environment department" several times throughout the section; and made minor stylistic changes throughout the section.

The 1989 amendment, effective June 16, 1989, substituted "three hundred dollars (\$300)" for "two hundred dollars (\$200)" in Subsection C(1); substituted "one hundred dollars (\$100)" for "fifty dollars (\$50.00)" in Subsection C(2); substituted "two hundred dollars (\$200)" for "one hundred dollars (\$100)" in Subsections C(3) and C(4); and substituted "an inspection fee not to exceed two hundred dollars (\$200)" for "a one hundred dollar (\$100) inspection fee" in Subsection F(7).

ANNOTATIONS

Drug manufacturer or wholesaler is required to have separate license for that particular operation; license to operate a drugstore does not extend to manufacturing or wholesaling activities. 1955-56 Op. Att'y Gen. No. 55-6211.

Hospital or clinic pharmacy must be licensed and registered, and, except in limited situations, prescriptions must be filled by a registered pharmacist. 1961-62 Op. Att'y Gen. No. 61-52.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 76.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Stay pending review of judgment or order revoking or suspending license, 166 A.L.R. 575.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs, 17 A.L.R.3d 1408.

28 C.J.S. Drugs and Narcotics § 29 et seq.

61-11-14.1. Nonresident pharmacy licensure; toll-free telephone service. (Repealed effective July 1, 2024.)

A. Any person making application to the board for a nonresident pharmacy license shall submit to the board an application for licensure that discloses the following information:

(1) the address of the principal office of the nonresident pharmacy and the names and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs to residents of this state. A report containing this information shall be made on an annual basis and within thirty days after any change of office location, corporate officer or pharmacist in charge;

(2) that the nonresident pharmacy complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is a resident, as well as with requests for information made by the board pursuant to this section;

(3) that the nonresident pharmacy maintains, at all times, a valid license, permit or registration to operate the pharmacy in compliance with the laws of the state in which it is a resident;

(4) a copy of the most recent inspection report resulting from an inspection of the nonresident pharmacy conducted by the regulatory or licensing agency of the state in which it is a resident; and

(5) that the nonresident pharmacy maintains its records of controlled substances or dangerous drugs that are dispensed to patients in this state so that the records are readily retrievable.

B. A nonresident pharmacy licensed under this section shall provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the nonresident pharmacy who has access to the patient's records. A nonresident pharmacy shall provide the toll-free telephone service during its regular hours of operation, but not less than six days a week and for a minimum of forty hours a week. The toll-free telephone number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

C. Nothing in this section shall be construed to authorize the dispensing of contact lenses by nonresident pharmacies.

History: 1978 Comp., § 61-11-14.1, enacted by Laws 1992, ch. 19, § 7; 1997, ch. 131, § 16.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 1997 amendment, effective June 20, 1997, purported to amend this section but made no change.

61-11-15. Pharmacies; sale of drugs; supervision requirements. (Repealed effective July 1, 2024.)

A. An owner of a pharmacy shall not:

(1) fail to place a pharmacist in charge;

(2) intentionally or fraudulently adulterate or cause to be adulterated or misbrand or cause to be misbranded any drugs compounded, sold or offered for sale in the pharmacy;

(3) alone or through any other person, permit the compounding of prescriptions or the selling of dangerous drugs in the owner's place of business except by a pharmacist, pharmacist intern or pharmacy technician;

(4) alone or through any other person, sell, offer for sale, compound or dispense dangerous drugs without being a pharmacist, pharmacist intern or pharmacy technician; provided that veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian" may be sold, offered for sale or distributed by persons holding a license issued pursuant to Subsection B of Section 61-11-14 NMSA 1978; or

(5) operate a pharmacy without the appropriate license.

B. An owner of a pharmacy shall provide to a consumer or the attorney general the current retail price for a prescription drug in any dosage or quantity when a consumer or the attorney general requests that information by phone, electronic device or otherwise. If a consumer requests the current retail prices for more than five prescription drugs at one time, the owner shall provide the information to the consumer no more than five days after the request is made; provided that the consumer:

(1) requests the information in writing;

(2) has a valid prescription for all the drugs for which the information is requested; and

(3) has made no more than three separate requests to the owner for the current retail prices for more than five prescription drugs within a six-month period.

C. Whenever an applicable law, rule or regulation requires or prohibits action by a pharmacy, responsibility for the violation shall be that of the owner and the pharmacist in charge.

D. As used in this section, "current retail price" means the cash price for a prescription drug charged to a consumer who has no prescription drug coverage.

History: 1953 Comp., § 67-9-46, enacted by Laws 1969, ch. 29, § 14; 1973, ch. 173, § 3; 1997, ch. 131, § 17; 2009, ch. 184, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2009 amendment, effective June 19, 2009, added Subsections B and D.

The 1997 amendment, effective June 20, 1997, designated the former introductory language as Subsection A; in Subsection A, redesignated former Subsections A through E as Paragraphs (1) through (5); deleted "of the pharmacy; provided that his restriction shall not apply to any person possessing only a limited license issued under Subsection B of Section 67-9-45 NMSA 1978" following "charge" in Paragraph (1), inserted "or" in Paragraph (2), in Paragraph (3), deleted "or poisons" following "drugs", deleted "or a" preceding "pharmacist intern", and added "or pharmacy technician; in Paragraph (4), added "by himself or through any other person" at the beginning of the paragraph, deleted "or poisons" following "drugs", inserted "pharmacist intern or pharmacy technician", deleted "limited" following "holding a", substituted "pursuant to" for "under", and substituted "61-11-14 NMSA 1978" for "67-9-45 NMSA 1978"; and added Subsection B.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 69.

Constitutionality of statute regulating sale of poisons, drugs or medicines, 54 A.L.R. 730.

Constitutionality of statute regulating sale or dispensation of medicines or drugs in original package, 54 A.L.R. 744.

Construction and effect of statutes in relation to operation of drugstore, pharmacy or chemical store without a registered pharmacist, 74 A.L.R. 1084.

Mistake as to chemical or product furnished or misdescription thereof by label or otherwise as basis of liability for personal injury or death resulting from combination with other chemical, 123 A.L.R. 939.

Criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

Alteration of product after it leaves hands of manufacturer or seller as affecting liability for product-caused harm, 41 A.L.R.3d 1251.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528, 62 A.L.R.4th 16.

State and local administrative inspection of and administrative warrants to search pharmacies, 29 A.L.R.4th 264.

Construction and application of learned-intermediary doctrine, 57 A.L.R.5th 1.

28 C.J.S. Drugs and Narcotics § 45 et seq.

61-11-16. Pharmacies; equipment required. (Repealed effective July 1, 2024.)

There shall be kept in every pharmacy, subject to review or testing by the board or its authorized agents, such references and equipment as the board may designate by regulation.

History: 1953 Comp., § 67-9-47, enacted by Laws 1969, ch. 29, § 15; 1997, ch. 131, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 1997 amendment, effective June 20, 1997, inserted "review or" and substituted "such references and

equipment as the board" for "modern prescription balances with weights, the necessary graduates, mortars and pestles, all in good condition, for compounding prescriptions, and such books and other equipment the board".

61-11-17. Display of license. (Repealed effective July 1, 2024.)

Every person shall have his license or registration and the license for the operation of the business conspicuously displayed in the pharmacy or place of business to which it applies or in which he is employed.

History: 1953 Comp., § 67-9-48, enacted by Laws 1969, ch. 29, § 16; 1997, ch. 131, § 19.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 1997 amendment, effective June 20, 1997, rewrote this section to the extent a detailed comparison is impracticable.

61-11-18. State license; actions authorized. (Repealed effective July 1, 2024.)

The board shall license department of health clinics and other health facilities of the department where dangerous drugs are stored, distributed or dispensed. All such clinics or other health facilities of the department are subject to the provisions of the Pharmacy Act.

History: 1953 Comp., § 67-9-49, enacted by Laws 1969, ch. 29, § 17; 1977, ch. 253, § 70; 1997, ch. 131, § 20.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 1997 amendment, effective June 20, 1997, rewrote the introductory language and deleted former Subsections A, B, and C, relating to the acquisition and repackaging of dangerous drugs, the receipt, possession, and

storing of dangerous drugs, and the dispensing of dangerous drugs, respectively.

ANNOTATIONS

Employment of licensed pharmacists. The health and environment department (now department of health) is not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

61-11-18.1. Reports to board. (Repealed effective July 1, 2024.)

Any person licensed under Article 61, Chapter 11 NMSA 1978 shall report in writing the occurrence of any of the following events to the board within fifteen days of discovery:

- A. permanent closing of a licensed premises;
- B. change of ownership, management, location or pharmacist in charge;
- C. theft or loss of drugs or devices;
- D. conviction of an employee for violating any federal or state drug laws;
- E. theft, destruction or loss of records required by federal or state law to be maintained;
- F. occurrences of significant adverse drug events, as defined by regulations of the board;
- G. dissemination of confidential information or personally identifiable information to a person other than a person authorized by the provisions of the Pharmacy Act or regulations adopted pursuant to that act to receive such information; and
- H. other matters or occurrences as the board may require by regulation.

History: Laws 1997, ch. 131, § 21; 2001, ch. 50, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2001 amendment, effective June 15, 2001, substituted "Any person licensed under Article 61, Chapter 11

NMSA 1978" for "A licensee" in the introductory language of the section; and substituted "events" for "reactions" in Subsection F.

61-11-18.2. Audit of pharmacy records. (Repealed effective July 1, 2024.)

A. An audit of the records of a pharmacy by an entity shall be conducted in accordance with the following criteria:

- (1) the entity conducting the initial on-site audit shall give the pharmacy notice at least two weeks prior to conducting the initial on-site audit for each audit cycle;
- (2) an audit that involves clinical or professional judgment shall be conducted by or in consultation with a pharmacist;
- (3) a clerical or recordkeeping error, regarding a required document or record, shall not necessarily constitute fraud, and that error:
 - (a) shall not be the basis for recoupment unless the error results in overpayment to the pharmacy, and any amount to be charged back or recouped due to overpayment shall not exceed the amount the pharmacy was overpaid; and
 - (b) shall not be subject to criminal penalties without proof of intent to commit fraud;
- (4) a pharmacy may use the records of a hospital, physician or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a dangerous drug or controlled substance;

(5) a finding of an overpayment or underpayment shall be based on the actual overpayment or underpayment of a specific individual claim;

(6) each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(7) a pharmacy shall be allowed at least twenty-one business days, with reasonable extensions allowed, following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit;

(8) the period covered by an audit shall not exceed two years from the date the claim was submitted to or adjudicated by an entity, unless it conflicts with state or federal law;

(9) an audit shall not be initiated or scheduled during the first five calendar days of a month;

(10) the preliminary audit report shall be delivered to the pharmacy within one hundred twenty days, with reasonable extensions allowed, after conclusion of the audit, and the final report shall be delivered to the pharmacy within six months after receipt of the preliminary audit report or final appeal, as provided for in Subsection B of this section, whichever is later;

(11) notwithstanding any other provision in this section, the entity conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits;

(12) the auditing entity conducting a pharmacy audit shall not compensate an employee or contractor with which an auditing entity contracts to conduct a pharmacy audit based on the amount claimed or the actual amount recouped from the pharmacy being audited;

(13) an entity shall not charge a fee for conducting an on-site or a desk audit unless there is a finding of actual fraud;

(14) as a result of an audit finding, a pharmacist or pharmacy may resubmit a claim within twenty-one business days to correct clerical or recordkeeping errors in lieu of recoupment of a claim where no actual financial harm to the patient has occurred; provided that the prescription was dispensed according to prescription documentation requirements pursuant to the Pharmacy Act;

(15) the requirements for a valid prescription or a pharmacy benefits manager's required operational standards for pharmacies shall not be more stringent than federal or state requirements;

(16) with notice to the prescriber, a pharmacy or pharmacist may satisfy state and federal requirements for a valid prescription by affixing or writing additional information on the front or back of a prescription or if the required information is electronically recorded on a patient's profile and is readily retrievable;

(17) the days' supply for unit-of-use items, such as topicals, drops, vials and inhalants, shall not be limited beyond manufacturer recommendations;

(18) if the only commercially available package size exceeds an entity's maximum days' supply, the dispensing of such package size must be accepted by the entity and shall not be the basis for recoupment;

(19) if the only commercially available package size exceeds an entity's maximum days' supply and the entity accepts the refill of such prescription, the entity shall not recoup such claim as an early refill; and

(20) the failure of a pharmacy to collect a copayment shall not be the basis for recoupment if the pharmacy provides documentation of billing of the claim and a reasonable attempt to collect the copayment.

B. Recoupment of any disputed funds shall occur after final internal disposition of the audit, including the appeals process set forth in Subsection C of this section. Should the identified discrepancy for an individual audit exceed twenty-five thousand dollars (\$25,000), future payments to the pharmacy may be withheld pending finalization of the audit.

C. Each entity conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity. If, following the appeal, the entity finds that an unfavorable audit report or any portion of the audit is unsubstantiated, the entity shall dismiss the audit report or the unsubstantiated portion of the report of the audit without the necessity of any further proceedings.

D. This section does not apply to any investigative audit that involves probable or potential fraud, waste, abuse or willful misrepresentation.

E. In a wholesale invoice audit conducted by an entity:

- (1) an entity shall not audit the claims of another entity;
- (2) the following shall not form the basis for recoupment:
 - (a) the national drug code for the dispensed drug is in a quantity that is a sub-unit or multiple of the purchased drug as reflected on a supporting wholesale invoice;
 - (b) the correct quantity dispensed is reflected on the audited pharmacy claim; or
 - (c) the drug dispensed by the pharmacy on an audited pharmacy claim is identical to the strength and dosage form of the drug purchased;
- (3) the entity shall accept as evidence:
 - (a) supplier invoices issued prior to the date of dispensing the drug underlying the audited claim;
 - (b) invoices from any supplier authorized by law to transfer ownership of the drug acquired by the audited pharmacy;
 - (c) copies of supplier invoices in the possession of the audited pharmacy; and
 - (d) reports required by any state board or agency; and
- (4) within five business days of request by the audited pharmacy, the entity shall provide supporting documentation provided to the entity by the audited pharmacy's suppliers.

F. As used in this section:

- (1) "entity" means a managed care company, insurance company or third-party payor, or representative of a managed care company, insurance company or third-party payor, or a pharmacy benefits manager or a subcontractor of a pharmacy benefits manager; and
- (2) "extrapolation" means a mathematical process or technique used to estimate audit results or findings for a larger batch or group of claims not reviewed.

History: Laws 2007, ch. 15, § 1; 2019, ch. 268, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2019 amendment, effective June 14, 2019, revised the pharmacy audit process, excepted certain audit findings from forming the basis for recoupment, and added a pharmacy benefits manager or its subcontractor as an auditing entity; deleted former Subsection A and redesignated former Subsections B through E as Subsections A through D, respectively; in Subsection A, in Paragraph A(3), in the introductory clause, after "fraud," deleted "but such a claim" and added "and that error", in Subparagraph A(3)(a), after the subparagraph designation, deleted "may be subject to recoupment" and added "shall not be the basis for recoupment unless the error results in overpayment to the pharmacy, and any amount to be charged back or recouped due to overpayment shall not exceed the amount the pharmacy was overpaid", in Paragraph A(5), after "underpayment

shall", deleted "not be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs and recoupment of claims shall", and after "overpayment or underpayment", deleted "unless the entity demonstrates a statistically justifiable method of projection or the projection for overpayment or underpayment is part of a settlement as agreed to by the pharmacy" and added "of a specific individual claim", in Paragraph A(8), after "two years", deleted "unless otherwise provided by contractual agreement", in Paragraph A(9), after "days of a month", deleted "due to the high volume of prescriptions filled during that time unless otherwise consented to by the pharmacy", deleted former Paragraph A(11) and redesignated former Paragraph A(12) as Paragraph A(11), and added new Paragraphs A(12) through A(20); in Subsection B, after "Subsection", deleted "D" and added "C"; in Subsection D, after "fraud," added "waste, abuse or"; and added new Subsections E and F.

61-11-19. Fund established; disposition; method of payment. (Repealed effective July 1, 2024.)

A. There is established in the state treasury the "pharmacy fund".

B. All funds received by the board and all money collected under the Pharmacy Act or any other act administered by the board shall be deposited with the state treasurer for credit to the pharmacy fund.

C. Payments from the pharmacy fund shall be made upon warrants of the secretary of finance and administration on vouchers issued in accordance with the budget approved by the department of finance and administration.

D. Amounts paid into the pharmacy fund prior to October 1, 2005 pursuant to Paragraph (2) of Subsection C of Section 61-11-14 NMSA 1978 are appropriated to the board for a prescription drug program serving persons pursuant to the Medical Insurance Pool Act [Chapter 59A, Article 54

NMSA 1978]; provided that the board enters into an arrangement with a state agency or a state-created entity for the operation of the program.

E. All amounts paid into the pharmacy fund shall only be used for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Pharmacy Act and any other acts administered by the board, the duties imposed thereby and the promotion of pharmacy education and standards in this state. All money unused at the end of the fiscal year shall remain in the pharmacy fund for use in accordance with the provisions of the Pharmacy Act.

F. All funds that may have accumulated to the credit of the pharmacy fund shall be continued for use by the board in administration of the Pharmacy Act.

History: 1953 Comp., § 67-9-50, enacted by Laws 1969, ch. 29, § 18; 1976, ch. 12, § 1; 1977, ch. 247, § 171; 1987, ch. 167, § 1; 2004, ch. 52, § 2; 2007, ch. 79, § 2; 2008, ch. 62, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2008 amendment, effective May 14, 2008, in Subsection D, appropriated amounts paid into the pharmacy fund to the board for a prescription drug program serving

persons pursuant to the Medical Insurance Pool Act and deleted the former provision that the program serve persons over the age of sixty-five.

The 2007 amendment, effective June 15, 2007, amended Subsection D to provide October 1, 2005 as the applicability date for payments into the fund.

The 2004 amendment, effective May 19, 2004, added new Subsection D and redesignated Subsections D and E as Subsections E and F.

61-11-20. Disciplinary proceedings; Uniform Licensing Act. (Repealed effective July 1, 2024.)

A. In accordance with the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, withhold, suspend or revoke any registration or license held or applied for under the Pharmacy Act upon grounds that the licensee or applicant:

(1) is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board;

(2) is convicted of a violation of a federal law relating to controlled substances, a federal food and drug law or a federal law requiring the maintenance of drug records;

(3) is guilty of a violation of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978], the Drug Product Selection Act [26-3-1 through 26-3-3 NMSA 1978], the Imitation Controlled Substance[s] Act [30-31A-1 through 30-31A-15 NMSA 1978], the Pharmacy Act, the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] or the Drug Precursor Act [Chapter 30, Article 31B NMSA 1978];

(4) is addicted to the use of dangerous drugs or narcotic drugs of any kind;

(5) is habitually intemperate;

(6) is guilty of knowingly or fraudulently adulterating or misbranding or causing to be adulterated or misbranded any drugs;

(7) is guilty of procuring or attempting to procure licensure as a pharmacist or pharmacist intern, registration as a pharmacy technician or licensure for a pharmacy or pharmaceutical business in this state for the licensee's or applicant's own self or another by knowingly making or causing to be made false representations to the board;

(8) is unfit or unable to practice pharmacy by reason of a physical or mental disease or disability as determined by the board and based on competent medical authority, during the period of such disability;

(9) fails to maintain any drug record required by federal law and that failure results in the condemnation of any drugs in the licensee's or applicant's possession or control;

(10) is convicted of a felony;

(11) has furnished false or fraudulent material in an application made in connection with drug or device manufacturing or distribution;

(12) has had a nonresident pharmacy, drug manufacturer, wholesale drug distributor, returned drugs processor, outsourcing facility, repackager or third-party logistics provider license or federal registration suspended or revoked;

(13) has obtained remuneration for professional services by fraud, misrepresentation or deception;

(14) has dealt with drugs or devices that the licensee or applicant knew or should have known were stolen;

(15) has purchased or received a drug or device from a source other than a person or pharmacy licensed pursuant to the Pharmacy Act, unless otherwise provided in that act, the Controlled Substances Act or the New Mexico Drug, Device and Cosmetic Act;

(16) is a wholesale drug distributor, manufacturer, outsourcing facility or repackager other than a pharmacy and dispenses or distributes drugs or devices directly to a patient;

(17) has violated a rule adopted by the board pursuant to the Pharmacy Act; or

(18) has divulged or revealed confidential information or personally identifiable information to a person other than a person authorized by the provisions of the Pharmacy Act or regulations adopted pursuant to that act to receive that information.

B. Disciplinary proceedings may be instituted by a person, shall be by sworn complaint and shall conform with the provisions of the Uniform Licensing Act. A party to the hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. The board may modify a prior order of revocation, suspension or refusal to issue a license of a pharmacist or a pharmacist intern or registration of a pharmacy technician but only upon a finding by the board that there no longer exist any grounds for disciplinary action; provided that cessation of the practice of pharmacy for twelve months or more shall require the pharmacist to undergo additional education, internship or examination as the board determines necessary.

History: 1953 Comp., § 67-9-51, enacted by Laws 1969, ch. 29, § 19; 1972, ch. 84, § 57; 1983, ch. 165, § 5; 1997, ch. 131, § 22; 2019, ch. 98, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2019 amendment, effective June 14, 2019, authorized the board of pharmacy to deny, withhold, suspend or revoke any registration or license held or applied for under the Pharmacy Act upon grounds that the licensee or applicant is guilty of a violation of the Drug Product Selection Act, the Imitation Controlled Substance Act or the Drug Precursor Act, the licensee or applicant has had a nonresident pharmacy, returned drugs processor, outsourcing facility, repackager or third-party logistics provider license or federal registration suspended or revoked, or is a manufacturer, outsourcing facility or repackager other than a pharmacy and dispenses or distributes drugs or devices directly to a patient; and in Subsection A, Paragraph A(3), added "the Drug Product Selection Act, the Imitation Controlled Substance Act", and after "Cosmetic Act", added "or the Drug Precursor Act", in Paragraph A(12), after "has had", deleted "any" and added "a nonresident pharmacy", after "wholesale drug distributor", added "returned drugs processor, outsourcing facility, repackager or third-party logistics provider", and after "license", added "or federal registration", and in Paragraph A(16), after "wholesale drug distributor", added "manufacturer, outsourcing facility or repackager".

The 1997 amendment, effective June 20, 1997, in Subsection A, deleted "certificate of" preceding "registration" in the introductory language, in Paragraph (7), substituted "licensure" for "registration" and inserted "registration as a pharmacy technician", and added Paragraphs (10) through (18) and made related stylistic changes; substituted "license of a pharmacist or a pharmacist intern or registration of a pharmacy technician" for "license or certificate of registration of a pharmacist or a pharmacist intern"; and deleted former Subsection D, relating to minor violations of the Pharmacy Act.

ANNOTATIONS

Authority of the pharmacy board over violations. — Section 61-1-3L NMSA 1978 grants the board of pharmacy authority to fine pharmacist licensees up to \$1,000 for any violation of the Pharmacy Act or for a violation of provisions of the board's rules and regulations for which the Pharmacy Act authorizes disciplinary action. Additionally, Section 61-1-3L NMSA 1978 grants the board authority to impose fines of the same amounts upon non-pharmacist registrants and licensees over whom the board has the power to impose other forms of discipline including license or registration revocation and suspension. As to persons over whom the board lacks such disciplinary powers under the Pharmacy Act, the Uniform Licensing Act does not grant the power to impose fines. 1995 Op. Att'y Gen. No. 95-01.

Commission of crime. — Board of pharmacy has authority to revoke license of a pharmacist involved in a crime. 1957-58 Op. Att'y Gen. No. 58-214.

Moral turpitude. — Board of pharmacy has jurisdiction to suspend or revoke a licensee's certificate when said board determines the fact of any undesirable conduct based on moral turpitude. 1957-58 Op. Att'y Gen. No. 58-214.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 76.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Stay pending review of judgment or order revoking or suspending license, 166 A.L.R. 575.

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs, 17 A.L.R.3d 1408.

Comment note on hearsay evidence in proceedings before state administrative agencies, 36 A.L.R.3d 12.

Criminal liability of pharmacy or pharmacist for welfare fraud in connection with supplying prescription drugs, 16 A.L.R.5th 390.

28 C.J.S. Drugs and Narcotics § 101 et seq.

61-11-21. Licensing of pharmacists and pharmacies required. (Repealed effective July 1, 2024.)

A. Unless a person is a pharmacist or is exempted under the Pharmacy Act, no person shall sell at retail any dangerous drug, compound any prescription or acquire and possess any dangerous drug without its being prescribed.

B. No person shall conduct or operate a place used for the retail sale, compounding or dispensing of drugs or prescriptions or a place represented by a sign or by advertisement to have a business name or specialization that includes the words "pharmacist", "pharmacy", "chemist's shop", "drug store", "drugs", "druggist", "drug sundries", "prescriptions" or a combination of these that might indicate to the public that the place is a pharmacy unless the place is licensed by the board under the Pharmacy Act.

C. No person shall permit anyone in the person's employ or under the person's supervision, except a pharmacist, pharmacist intern or pharmacy technician, to compound, dispense, label or otherwise prepare prescriptions.

D. The provisions of Subsections A, B and C of this section shall not apply to a person possessing a license issued pursuant to Subsection B of Section 61-11-14 NMSA 1978 for the sale or distribution of veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; provided that the possessors of such a license may only sell or distribute such drugs on the order of a licensed veterinarian and may not represent their place of business by a sign or advertisement that includes the words "pharmacist", "pharmacy", "chemist's shop", "drug store", "drugs", "druggist", "drug sundries", "prescriptions" or a combination of these that might indicate to the public that the place is a pharmacy.

History: 1953 Comp., § 67-9-52, enacted by Laws 1969, ch. 29, § 20; 1973, ch. 173, § 4; 1997, ch. 131, § 23; 2021, ch. 9, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed the prohibition against non-pharmacists' use of certain pharmacy-related words on signs or advertisements; and in Subsection B, after "pharmacy", deleted "apothecary", "apothecary shop", and after "combination of these", deleted "or any other words of similar import or by an insignia or device" throughout.

The 1997 amendment, effective June 20, 1997, deleted "or poison" following "drug" in Subsection A; in Subsection B, substituted "of these" for "thereof", deleted the Paragraph (1) designation, deleted former Paragraph (2), which read: "the business being conducted on the licensed premises constantly employs, on a regular basis, a pharmacist", and made related stylistic changes; in Subsection C, deleted "or a" following "except a pharmacist" and inserted "or pharmacy technician"; in Subsection D, substituted "possessing a license issued pursuant to Subsection B of Section 61-11-14 NMSA 1978" for "possessing a limited license issued under Subsection B of Section 67-9-45 NMSA 1978", inserted "apothecary shop" and substituted "of these" for "thereof".

ANNOTATIONS

Constitutionality of former law. — Former law requiring employment of registered pharmacist in business using such terms as "pharmacist", "pharmacy" or "drugstore" was not monopolistic, discriminatory nor an illegal

restraint of trade. *State v. Collins*, 1956-NMSC-046, 61 N.M. 184, 297 P.2d 325.

Miners' hospital of New Mexico may not sell or dispense medicine and drugs while operating as a public institution which is not licensed as required. 1957-58 Op. Att'y Gen. No. 57-254.

Hospital or clinic pharmacy must be licensed and registered, and, except in limited situations, prescriptions must be filled by a registered pharmacist. 1961-62 Op. Att'y Gen. No. 61-52.

Drug dispensing clinic to be licensed. — A drug dispensing clinic which orders dangerous drugs and controlled substances from state wholesale outlets, and which is operated by a private firm on contract to the federal government, must be licensed by the board of pharmacy and must obtain board registration if required. 1976 Op. Att'y Gen. No. 76-19.

The health and environment department is not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d 290, Drugs, Narcotics and Poisons § 75.

Failure of druggist or apothecary to procure license as affecting validity of contracts, 30 A.L.R. 862, 42 A.L.R. 1226, 118 A.L.R. 646.

Constitutionality of statutes regulating sale of poisons, drugs or medicines, 54 A.L.R. 730.

Construction of statutes in relation to operation of drugstore, pharmacy or chemical store, without registered pharmacist, 74 A.L.R. 1084.

28 C.J.S. Drugs and Narcotics § 29 et seq.

61-11-22. Exemptions from act. (Repealed effective July 1, 2024.)

A. The Pharmacy Act does not apply to licensed practitioners in this state in supplying to their patients any drug if the licensed practitioner is practicing the licensed practitioner's profession and does not keep a pharmacy, advertised or otherwise, for the retailing of dangerous drugs.

B. The Pharmacy Act does not prevent:

- (1) the personal administration of drugs carried by a licensed practitioner in order to supply the immediate needs of the licensed practitioner's patients;
- (2) the sale of nonnarcotic proprietary preparations; or
- (3) the possession, storage, dispensing, distribution, administration or prescribing of an opioid antagonist in accordance with the provisions of Section 24-23-1 NMSA 1978.

History: 1953 Comp., § 67-9-53, enacted by Laws 1969, ch. 29, § 21; 1997, ch. 131, § 24; 2016, ch. 45, § 3; 2016, ch. 47, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 2016 amendment, effective March 4, 2016, provided an exemption in the Pharmacy Act for the possession, storage, dispensing, distribution, administration or prescribing of an opioid antagonist in accordance with the provisions of Section 24-23-1 NMSA 1978; in Subsection A, after "practicing", deleted "his" and added "the licensed practitioner's"; in Subsection B, Paragraph (1), after "immediate needs of", deleted "his" and added "the licensed practitioner's", and added Paragraph (3).

Laws 2016, ch. 45, § 3 and Laws 2016, ch. 47, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2016, ch. 47, § 3. See 12-1-8 NMSA 1978.

The 1997 amendment, effective June 20, 1997, deleted "or poisons" following "drugs" in Subsection A.

ANNOTATIONS

Physicians providing drugs to patients. — A physician may keep a supply of drugs without obtaining a pharmacy license, but only to provide to his or her patients. The physician may provide drugs to his or her patients only in connection with his or her treatment of them. A physician may assess a reasonable charge for his services, including a charge for the drugs he or she supplies to his or her patients. 1988 Op. Att'y Gen. No. 88-49.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 69.

"Proprietary or patent medicine," what substances or commodities are within provision as to, in statute or ordinance, 76 A.L.R. 1207.

61-11-23. Construction of laws relating to drugs. (Repealed effective July 1, 2024.)

A. The Pharmacy Act does not amend or repeal any of the laws that govern the manufacture, sale or distribution of controlled substances.

B. The Pharmacy Act does not amend or repeal the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978].

History: 1953 Comp., § 67-9-54, enacted by Laws 1969, ch. 29, § 22; 1972, ch. 84, § 58; 1997, ch. 131, § 25.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

Cross references. — For Controlled Substances Act, see 30-31-1 NMSA 1978 et seq.

The 1997 amendment, effective June 20, 1997, substituted "that" for "which" in Subsection A; deleted former Subsection B, which read: "The Pharmacy Act does not prevent or apply to the sale or use of economic poisons as defined under the New Mexico Economic Poisons Act of 1951"; redesignated former Subsection C as Subsection B and inserted "Device" in Subsection B.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 36.

Construction of statutes in relation to operation of drugstore, pharmacy or chemical store, without registered pharmacist, 74 A.L.R. 1084.

Construction of provision of Uniform Narcotic Drug Act requiring a physician's prescription as a prerequisite to a pharmacist's sale of narcotics, 10 A.L.R.3d 560.

28 C.J.S. Drugs and Narcotics § 8 et seq.

61-11-24. Violations; penalties. (Repealed effective July 1, 2024.)

A. It is a misdemeanor for any person to:

- (1) practice or attempt to practice pharmacy without a current license from the board;
- (2) use the title of registered pharmacist unless he is licensed as such pursuant to the Pharmacy Act;
- (3) procure or attempt to procure licensure as a pharmacist or to procure a license for a pharmacy for himself or another by making or causing to be made false representations to the board;
- (4) allow any other person in his employ or under his supervision to compound or dispense prescriptions unless he is a pharmacist, pharmacist intern or pharmacy technician in accordance with the Pharmacy Act or exempted from the provisions of that act; or

(5) own, operate or maintain a pharmacy, hospital pharmacy, clinic, custodial care facility or drug distribution business unless licensed to do so pursuant to the Pharmacy Act.

B. A person convicted pursuant to Subsection A of this section shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: 1953 Comp., § 67-9-55, enacted by Laws 1969, ch. 29, § 23; 1972, ch. 84, § 59; 1997, ch. 131, § 26.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 1997 amendment, effective June 20, 1997, designated the former introductory language as Subsection A and redesignated former Subsections A through E as Paragraphs A(1) through A(5); in Subsection A, deleted "petty" preceding "misdemeanor" in the introductory language, deleted "certificate of registration and a" preceding "current" in Paragraph (1), substituted "pursuant to" for "under" in Paragraph (2), substituted "licensure" for "registration" in Paragraph (3), in Paragraph (4), deleted "or sell or compound poisons" following "prescriptions", deleted "or registered as a" preceding "pharmacist", and inserted "or pharmacy technician", substituted "pursuant

to" for "under" in Paragraph (5); added Subsection B; and made stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Construction and effect of statutes in relation to operation of drugstore, pharmacy or chemical store without a registered pharmacist, 74 A.L.R. 1084.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Criminal responsibility of druggist for injury in consequence of mistake, 55 A.L.R.2d 714.

Criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

28 C.J.S. Drugs and Narcotics § 101 et seq.

61-11-25. Power to enjoin violations. (Repealed effective July 1, 2024.)

In addition to the remedies provided in the Pharmacy Act, the board may apply to the district court for a temporary or permanent injunction restraining any person from violating any provision of the Pharmacy Act irrespective of whether or not there exists an adequate remedy at law.

History: 1953 Comp., § 67-9-56, enacted by Laws 1969, ch. 29, § 24; 1997, ch. 131, § 27.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

Cross references. — For injunctions, see Rules 1-065 and 1-066 NMRA.

The 1997 amendment, effective June 20, 1997, substituted "may" for "of pharmacy is hereby authorized to"

and deleted "and such court shall have jurisdiction upon hearing and for good cause shown to grant" preceding "a temporary".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons §§ 229, 245.

61-11-26. Licensure under previous law. (Repealed effective July 1, 2024.)

Any person or place of business licensed as a pharmacist, pharmacist intern or pharmacy under any prior laws of this state whose license is valid on the effective date of the Pharmacy Act shall be held to be licensed under the provisions of the Pharmacy Act and entitled to renewal of this license as provided in the Pharmacy Act.

History: 1953 Comp., § 67-9-57, enacted by Laws 1969, ch. 29, § 25.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

Compiler's notes. — The phrase "effective date of the Pharmacy Act" refers to the effective date of Laws 1969, ch. 29, which took effect July 1, 1969.

61-11-27. Transfer of funds. (Repealed effective July 1, 2024.)

All money that has accumulated to the credit of the board under any previous law shall be continued for use by the board in the administration of the Pharmacy Act and any other laws being administered by the board.

History: 1953 Comp., § 67-9-58, enacted by Laws 1969, ch. 29, § 26; 1997, ch. 131, § 28.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "money that has" for "funds which have".

61-11-28. Uniform Licensing Act. (Repealed effective July 1, 2024.)

The board is subject to all the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

History: 1953 Comp., § 67-9-59, enacted by Laws 1969, ch. 29, § 28; 1997, ch. 131, § 29.

Delayed repeals. — For delayed repeal of this section, see 61-11-29 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "is" for "of Pharmacy shall be".

61-11-29. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The board of pharmacy is terminated on July 1, 2023 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Pharmacy Act until July 1, 2024. Effective July 1, 2024, the Pharmacy Act is repealed.

History: 1978 Comp., § 61-11-29, enacted by Laws 1979, ch. 266, § 2; 1981, ch. 241, § 24; 1985, ch. 87, § 9; 1991, ch. 189, § 16; 1997, ch. 46, § 11; 2003, ch. 428, § 11; 2009, ch. 96, § 8; 2015, ch. 119, § 10.

The 2015 amendment, effective June 19, 2015, extended the termination date for the board of pharmacy to July 1, 2023, and the repeal date to July 1, 2024.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, substituted "the Pharmacy Act" for "Chapter 61, Article 11

NMSA 1978" throughout the section, and in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004".

The 1997 amendment, effective June 20, 1997, substituted "2003" for "1997", substituted "2004" for "1998", and substituted "July 1, 2004, Chapter 61, Article 11 NMSA 1978" for "July 1, 1998 Article 11 of Chapter 61, NMSA 1978".

The 1991 amendment, effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

ARTICLE 11A

Impaired Pharmacists

Sec.

61-11A-1. Short title.

61-11A-2. Definitions.

61-11A-3. Administration.

61-11A-4. Committee; functions.

Sec.

61-11A-5. Board referral.

61-11A-6. Voluntary participation.

61-11A-7. Review activities.

61-11A-8. Civil liability.

61-11A-1. Short title.

This act [61-11A-1 to 61-11A-8 NMSA 1978] may be cited as the "Impaired Pharmacists Act".

History: Laws 1987, ch. 284, § 1.

61-11A-2. Definitions.

As used in the Impaired Pharmacists Act:

- A. "board" means the New Mexico board of pharmacy;
- B. "board-approved intervenors" means persons trained to intervention and designated by the board to implement the intervention process when necessary;
- C. "committee" means a committee appointed by the board to formulate and administer the impaired pharmacists program;
- D. "impaired pharmacist" means a pharmacist who is unable to practice pharmacy with reasonable skill, competency or safety to the public because of substance abuse, mental illness, the aging process or loss of motor skills;

E. "impaired pharmacist program" means a plan approved by the board for treatment and rehabilitation of an impaired pharmacist;

F. "intervention" means a process whereby an alleged impaired pharmacist is confronted by the board or board-approved intervenors who provide documentation that a problem exists and attempt to convince the pharmacist to seek evaluation and treatment;

G. "rehabilitation" means the process whereby an impaired pharmacist advances in an impaired pharmacists program to an optimal level of competence to practice pharmacy without endangering the public; and

H. "verification" means a process whereby alleged professional impairment is identified or established.

History: Laws 1987, ch. 284, § 2.

61-11A-3. Administration.

The board may appoint a committee to organize and administer a program that will fulfill two functions. The program shall serve as a diversion program to which the board may refer licensees where appropriate in lieu of or in addition to other disciplinary action. The program shall also be a confidential source of treatment or referral for pharmacists who, on a strictly voluntary basis and without the knowledge of the board, desire to avail themselves of its services.

History: Laws 1987, ch. 284, § 3.

61-11A-4. Committee; functions.

The functions of the committee shall include:

- A. evaluation of pharmacists who request participation in the program;
- B. review and designation of treatment facilities and services to which pharmacists in the program may be referred;
- C. receipt and review of information relating to the participation of [a] pharmacists in the program;
- D. assisting the pharmacists' professional association in publicizing the program; and
- E. preparation of reports for the board.

History: Laws 1987, ch. 284, § 4.

Bracketed material. — The word "a" in Subsection C appears in the session laws, and was placed in brackets by the compiler as apparent surplusage.

61-11A-5. Board referral.

A. The board shall inform each pharmacist referred to the program by board action of the procedures followed in the program, of the rights and responsibilities of the pharmacist in the program and of the possible consequences of noncompliance with the program.

B. Failure to comply with any treatment provision of a program may result in termination of the participation by the pharmacist in the program. The name and license number of a pharmacist who is terminated for failure to comply with the treatment provisions of a program shall be reported to the board.

C. Participation in a program under this section shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this section shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program pursuant to this section.

History: Laws 1987, ch. 284, § 5.

61-11A-6. Voluntary participation.

A. The committee shall inform each pharmacist who voluntarily participates in the impairment program without referral by the board of the procedures followed in the program, of the rights and responsibilities of the pharmacist in the program and of the possible consequences of noncompliance with the program.

B. The board shall be informed of the failure of a pharmacist to comply with any treatment provision of a program if the committee determines that the resumption of his practice of pharmacy would pose a threat to the health and safety of the public.

C. Participation in a program under this section shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this section shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program pursuant to this section.

History: Laws 1987, ch. 284, § 6.

61-11A-7. Review activities.

The board shall review the activities of the committee on a quarterly basis. As part of this evaluation, the board shall review files of all participants in the impairment program. Names of those pharmacists who entered the program voluntarily without the knowledge of the board shall remain confidential from the board except when monitoring by the board reveals misdiagnosis, case mismanagement or noncompliance by the participant.

History: Laws 1987, ch. 284, § 7.

61-11A-8. Civil liability.

No member of the board or the committee or any board-approved intervenor shall be liable for any civil damages because of acts or omissions which may occur while acting in good faith pursuant to the Impaired Pharmacists Act.

History: Laws 1987, ch. 284, § 8.

ARTICLE 11B

Pharmacist Prescription Authority

Sec.

61-11B-1. Short title.

61-11B-2. Definitions.

Sec.

61-11B-3. Pharmacist clinician prescriptive authority.

61-11B-1. Short title.

This act [61-11B-1 to 61-11B-3 NMSA 1978] may be cited as the "Pharmacist Prescriptive Authority Act".

History: Laws 1993, ch. 191, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of pharmacist who accurately fills prescription for harm resulting to user, 44 A.L.R.5th 393.

Construction and application of learned-intermediary doctrine, 57 A.L.R.5th 1.

Civil liability of pharmacist or druggist for failure to warn of potential drug interactions in use of prescription drug, 79 A.L.R.5th 409.

61-11B-2. Definitions.

As used in the Pharmacist Prescriptive Authority Act:

- A. "administer" means the direct application of a drug by any means to the body of a person;
- B. "board" means the board of pharmacy;
- C. "dangerous drug" means a drug that, because of any potentiality for harmful effect or the methods of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and the drug prior to dispensing is required by federal law and state law to bear the manufacturer's legend of "Caution: federal law prohibits dispensing without prescription." or "RX only";
- D. "guidelines or protocol" means a written agreement between a pharmacist clinician or group of pharmacist clinicians and a practitioner or group of practitioners that delegates prescriptive authority;
- E. "monitor dangerous drug therapy" means the review of the dangerous drug therapy regimen of patients by a pharmacist clinician for the purpose of evaluating and rendering advice to the prescribing practitioner regarding adjustment of the regimen. "Monitor dangerous drug therapy" includes:
 - (1) collecting and reviewing patient dangerous drug histories;
 - (2) measuring and reviewing routine patient vital signs, including pulse, temperature, blood pressure and respiration; and
 - (3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting;
- F. "pharmacist" means a person duly licensed by the board to engage in the practice of pharmacy pursuant to the Pharmacy Act;
- G. "pharmacist clinician" means a pharmacist with additional training, at least equivalent to the training received by a physician assistant, required by regulations adopted by the board in consultation with the New Mexico board of medical examiners [New Mexico medical board] and the New Mexico academy of physician assistants, who exercises prescriptive authority in accordance with guidelines or protocol;
- H. "practitioner" means a physician duly authorized by law in New Mexico to prescribe controlled substances; and
- I. "prescriptive authority" means the authority to prescribe, administer or modify dangerous drug therapy.

History: Laws 1993, ch. 191, § 2; 1995, ch. 121, § 1; 1999, ch. 298, § 4.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

The 1999 amendment, effective June 18, 1999, added "or 'RX only'" at the end of Subsection C and deleted "of pharmacy" following "board" in Subsection F.

The 1995 amendment, effective July 1, 1995, added Subsection A, redesignated the remaining subsections accordingly, made minor stylistic changes in Subsection E, and inserted "administer" in Subsection I.

61-11B-3. Pharmacist clinician prescriptive authority.

A. A pharmacist clinician planning to exercise prescriptive authority in practice shall have on file at the place of practice written guidelines or protocol. The guidelines or protocol shall authorize a pharmacist clinician to exercise prescriptive authority and shall be established and approved by a practitioner in accordance with regulations adopted by the board. A copy of the written guidelines or protocol shall be on file with the board. The practitioner who is a party to the guidelines or protocol shall be in active practice and the prescriptive authority that the practitioner grants to a pharmacist clinician shall be within the scope of the practitioner's current practice.

B. The guidelines or protocol required by Subsection A of this section shall include:

- (1) a statement identifying the practitioner authorized to prescribe dangerous drugs and the pharmacist clinician who is a party to the guidelines or protocol;
- (2) a statement of the types of prescriptive authority decisions that the pharmacist clinician is authorized to make, which may include:

(a) a statement of the types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case; and

(b) a general statement of the procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(3) a statement of the activities the pharmacist clinician is to follow in the course of exercising prescriptive authority, including documentation of decisions made and a plan for communication or feedback to the authorizing practitioner concerning specific decisions made. Documentation may occur on the prescriptive record, patient profile, patient medical chart or in a separate log book; and

(4) a statement that describes appropriate mechanisms for reporting to the practitioner monitoring activities and results;

C. The written guidelines or protocol shall be reviewed and shall be revised every two years if necessary.

D. A pharmacist clinician planning to exercise prescriptive authority in practice shall be authorized to monitor dangerous drug therapy.

E. The board shall adopt regulations to carry out the provisions of the Pharmacist Prescriptive Authority Act.

F. For the purpose of the Pharmacist Prescriptive Authority Act, the New Mexico medical board shall adopt rules concerning the guidelines and protocol for their respective practitioners defined in Subsection D of Section 61-11B-2 NMSA 1978.

History: Laws 1993, ch. 191, § 3; 2016, ch. 90, § 27; 2021, ch. 54, § 47.

The 2021 amendment, effective June 18, 2021, in Subsection F, after "New Mexico medical board", deleted "and the board of osteopathic medicine".

The 2016 amendment, effective July 1, 2016, required the board of osteopathic medicine to adopt rules concerning the guidelines and protocol for osteopathic practitioners; in Subsection A, after "prescriptive authority in", deleted "his", after "shall have on file at", deleted "his" and added "the", and after "prescriptive authority that",

deleted "he" and added "the practitioner"; in Subsection D, after "prescriptive authority in", deleted "his"; in Subsection F, after "Pharmacist Prescriptive Authority Act, the", added "New Mexico medical", after "board", deleted "of medical examiners" and added "and the board of osteopathic medicine", after "shall adopt", deleted "regulations" and added "rules", after "protocol for", added "their respective", after "Subsection", deleted "C" and added "D", and after "Section", deleted "2 of that act" and added "61-11B-2 NMSA 1978".

ARTICLE 12

Physical Therapy

(Repealed by Laws 1997, ch. 89, § 21.)

61-12-1 to 61-12-21. Repealed.

Repeals. — Laws 1997, ch. 89, § 21 repealed 61-12-1 to 61-12-21 NMSA 1978, relating to physical therapy, effective July 1, 1997. For provisions of former sections, see the 1996 NMSA on *NMOneSource.com*. For present comparable provisions, see 61-12D-1 NMSA 1978 et seq.

Compiler's notes. — Section 61-12-21 NMSA 1978 was amended by Laws 1997, ch. 46, § 12 to extend the sunset dates of Chapter 61, Article 12 NMSA 1978. However, due to the repeal of the article by Laws 1997, ch. 89, § 21, the amendment was not set out.

ARTICLE 12A

Occupational Therapy

Sec.

61-12A-1. Short title. (Repealed effective July 1, 2028.)

61-12A-2. Purpose. (Repealed effective July 1, 2028.)

61-12A-3. Definitions. (Repealed effective July 1, 2028.)

61-12A-4. Occupational therapy services. (Repealed effective July 1, 2028.)

Sec.

61-12A-5. Supervision; required; defined. (Repealed effective July 1, 2028.)

61-12A-6. License required. (Repealed effective July 1, 2028.)

61-12A-7. Exemptions. (Repealed effective July 1, 2028.)

Sec.	Sec.
61-12A-8. Board created. (Repealed effective July 1, 2028.)	61-12A-17. Inactive licenses. (Repealed effective July 1, 2028.)
61-12A-9. Board; powers and duties. (Repealed effective July 1, 2028.)	61-12A-18. Fees. (Repealed effective July 1, 2028.)
61-12A-10. Board; administrative procedures. (Repealed effective July 1, 2028.)	61-12A-19. Uniform Licensing Act. (Repealed effective July 1, 2028.)
61-12A-11. Requirements for licensure. (Repealed effective July 1, 2028.)	61-12A-20. Fund created. (Repealed effective July 1, 2028.)
61-12A-12. Examinations. (Repealed effective July 1, 2028.)	61-12A-21. Penalties. (Repealed effective July 1, 2028.)
61-12A-13. Provisional permits. (Repealed effective July 1, 2028.)	61-12A-22. Disciplinary action; denial, suspension or revocation. (Repealed effective July 1, 2028.)
61-12A-14. Expedited licensure by endorsement. (Repealed effective July 1, 2028.)	61-12A-23. Criminal Offender Employment Act. (Repealed effective July 1, 2028.)
61-12A-15. License renewal. (Repealed effective July 1, 2028.)	61-12A-24. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)
61-12A-16. Display of license. (Repealed effective July 1, 2028.)	61-12A-25. Applicability to other health professions. (Repealed effective July 1, 2028.)

61-12A-1. Short title. (Repealed effective July 1, 2028.)

Chapter 61, Article 12A NMSA 1978 may be cited as the "Occupational Therapy Act".

History: 1978 Comp., § 61-12A-1, enacted by Laws 1996, ch. 55, § 1; 2005, ch. 199, § 1.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-1 NMSA 1978, as enacted by Laws 1983, ch. 267, § 1, and § 1 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, added the statutory reference to the act.

61-12A-2. Purpose. (Repealed effective July 1, 2028.)

It is the purpose of the Occupational Therapy Act to provide for the regulation of persons offering occupational therapy services to the public in order to safeguard the public health, safety and welfare; to protect the public from being misled by incompetent and unauthorized persons; to assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and to assure the availability of occupational therapy services of high quality to persons in need of such services.

History: 1978 Comp., § 61-12A-2, enacted by Laws 1996, ch. 55, § 2; 2005, ch. 199, § 2.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-2 NMSA 1978, as enacted by Laws 1983, ch. 267, § 2, relating to definitions, and § 2 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, changed "registered occupational therapists" to "occupational therapists" and changed "certified occupational therapy assistants" to "occupational therapy assistants".

61-12A-3. Definitions. (Repealed effective July 1, 2028.)

As used in the Occupational Therapy Act:

- A. "board" means the board of examiners for occupational therapy;
- B. "censure" means a formal expression of disapproval that is publicly announced;
- C. "denial of license" means that a person is barred from becoming licensed to practice in accordance with the provisions of the Occupational Therapy Act either indefinitely or for a certain period;
- D. "licensee" means an occupational therapist or occupational therapy assistant, as appropriate;
- E. "occupational therapist" means a person who holds an active license to practice occupational therapy in New Mexico in accordance with board rules;
- F. "occupational therapy" means the therapeutic use of occupations, including everyday life activities with persons across the life span, including groups, populations or organizations, to enhance or enable participation, performance or function in roles, habits and routines in home, school, workplace, community and other settings. Occupational therapy services are provided for

habilitation, rehabilitation and the promotion of health and wellness to those clients who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction. "Occupational therapy" includes addressing the physical, cognitive, psychosocial, sensory-perceptual and other aspects of performance in a variety of contexts and environments to support engagement in occupations that affect physical and mental health, well-being and quality of life. Occupational therapy uses everyday life activities to promote mental health and support functioning in people with or at risk of experiencing a range of mental health disorders, including psychiatric, behavioral, emotional and substance abuse disorders;

G. "occupational therapy assistant" means a person having no less than an associate degree in occupational therapy and holding an active license to practice occupational therapy in New Mexico who assists in the practice of occupational therapy under the supervision of the occupational therapist in accordance with board rules;

H. "person" means an individual, association, partnership, unincorporated organization or corporate body;

I. "probation" means that continued licensure is subject to fulfillment of specified conditions such as monitoring, education, supervision or counseling;

J. "reprimand" means a formal expression of disapproval that is retained in the licensee's file but not publicly announced;

K. "revocation" means permanent loss of licensure; and

L. "suspension" means the loss of licensure for a certain period, after which the person may be required to apply for reinstatement.

History: 1978 Comp., § 61-12A-3, enacted by Laws 1996, ch. 55, § 3; 2005, ch. 199, § 3; 2019, ch. 5, § 1.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-3 NMSA 1978, as enacted by Laws 1983, ch. 267, § 3, relating to licensing provisions, and § 3 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2019 amendment, effective June 14, 2019, revised the definition of "occupational therapy" as used in the Occupational Therapy Act; in Subsection E, after "New Mexico", added "in accordance with board rules"; in Subsection F, after "therapeutic use of", added "occupations, including", after "activities with persons", deleted "or" and added "across the life span, including", after "groups", added "populations or organizations", after the next occurrence of "to", deleted "participate" and added "enhance or enable participation, performance or function", after "roles", deleted "and situations" and added "habits and routines", after "settings", deleted "to promote", added "Occupational therapy services are provided for habilitation, rehabilitation and the promotion of", after "psychosocial", deleted "sensory" and added "sensory-perceptual", after "contexts", added "and environments", after "engagement in", deleted "everyday life activities" and added "occupations",

and after "affect", added "physical and mental"; and added the language from former Subsection G to Subsection F, deleted "aide or technician means an unlicensed person who assists in occupational therapy, who works under direct supervision of an occupational therapist or occupational therapy assistant" and added the remainder of Subsection F; redesignated former Subsections H through M as Subsections G through L, respectively; and in Subsection G, after "who assists", deleted "an" and added "in the practice of", and after "occupational therapist", added "in accordance with board rules".

The 2005 amendment, effective July 1, 2005, deleted former Subsection C, which defined "certified occupational therapy assistant"; added the definition of "occupational therapist" in Subsection E; redefined "occupational therapy" in Subsection F; added the definition of "occupational therapy assistant" in Subsection H; and deleted former Subsection J which defined "registered occupational therapist".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 4, 5, 14, 45 to 47, 58 to 62, 72.

53 C.J.S. Licenses §§ 5, 7, 30, 37 to 41, 47, 50 to 66, 82.

61-12A-4. Occupational therapy services. (Repealed effective July 1, 2028.)

The practice of occupational therapy includes the following processes and services:

A. evaluation of factors affecting all areas of occupation, including activities of daily living, instrumental activities of daily living, rest and sleep, education, work, productivity, play, leisure and social participation; including:

(1) client factors, including neuromuscular, sensory, visual, mental, cognitive and pain factors and body structures, including cardiovascular, digestive, integumentary and genitourinary systems and structures related to movement;

(2) habits, routines, roles and behavior patterns;

(3) cultural, physical, environmental, social and spiritual contexts and activity demands that affect performance; and

- (4) performance skills, including motor process and communication and interaction skills;
- B. activity analysis to determine activity demands of occupations performed;
- C. design, implementation and modification of therapeutic interventions, including the following activities related to selection of intervention strategies to direct the process of interventions:
 - (1) establishment, remediation or restoration of a skill or ability that has not yet developed, is impaired or is in decline;
 - (2) compensation, modification or adaptation of activity or environment to enhance performance or to prevent injuries, disorders or other conditions;
 - (3) retention, maintenance and enhancement of skills and capabilities without which performance in everyday life activities would decline;
 - (4) promotion of health and wellness, including the use of self-management strategies to enable or enhance performance in everyday life activities;
 - (5) prevention of barriers to performance, including injury and disability prevention; and
 - (6) interventions and procedures to promote or enhance safety and performance in areas of occupation, including:
 - (a) therapeutic use of occupations, exercises and activities;
 - (b) training in self-care, self-management, health management and maintenance, home management, community-work reintegration, school activities and work performance;
 - (c) development, remediation or compensation of neuromusculoskeletal, sensory-perceptual, sensory-integrative and modulation, visual, mental and cognitive functions, pain tolerance and management, developmental skills and behavioral skills;
 - (d) therapeutic use of self, including one's personality, insights, perceptions and judgments, as part of the therapeutic process;
 - (e) education and training of persons, including family members, caregivers, groups, populations and others;
 - (f) care coordination, case management and transition services;
 - (g) consultative services to groups, programs, organizations or communities;
 - (h) modification of home, work, school and community environments and adaptation of processes, including the application of ergonomic principles;
 - (i) assessment, design, fabrication, application, fitting and training in seating and positioning, assistive technology, adaptive devices and orthotic devices and training in the use of prosthetic devices;
 - (j) assessment, recommendation and training in techniques to enhance functional mobility, including management of wheelchairs and other mobility devices;
 - (k) low-vision rehabilitation;
 - (l) driver rehabilitation and community mobility;
 - (m) management of feeding, eating and swallowing;
 - (n) application of physical agent modalities and use of a range of specific therapeutic procedures such as wound care management; techniques to enhance sensory, perceptual and cognitive processing; and manual therapy techniques to enhance performance skills;
 - (o) facilitating the occupational performance of groups, populations or organizations; and
 - (p) management of a client's mental health, functioning and performance; and
- D. use of means to measure the outcomes and effects of interventions to reflect the attainment of treatment goals, including:
 - (1) improved quality of life;
 - (2) the degree of participation;
 - (3) role competence;
 - (4) well-being;
 - (5) improved life function;
 - (6) enhanced performance; and
 - (7) prevention criteria.

History: 1978 Comp., § 61-12A-4, enacted by Laws 1996, ch. 55, § 4; 2005, ch. 199, § 4; 2019, ch. 5, § 2.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2019 amendment, effective June 14, 2019, revised the scope of practice of occupational therapy; deleted former Subsection A, which related to strategies to direct the process of interventions, and redesignated former

Subsection B as Subsection A; in Subsection A, after "affecting", added "all areas of occupation, including", after "daily living", added "rest and sleep", and after "work", added "productivity", in Paragraph A(1), after "visual", deleted "perceptual and" and added "mental", after "cognitive", deleted "functions", added "pain factors and body structures, including", and after "genitourinary systems", added "and structures related to movement"; added new Subsections B and C, redesignated former Subsection C as Paragraph C(6) and redesignated former Paragraphs C(1) through C(10) as Subparagraphs C(6)(a) through C(6)(j), respectively; in Paragraph C(6), deleted "activities of daily living, instrumental activities of daily living, education, work, play, leisure and social participation" and added "areas of occupation"; in Subparagraph C(6)(b), after "self-management", added "health management and maintenance", and after "community-work reintegration", added "school activities and work performance"; in Subparagraph C(6)(c), after "compensation of", deleted "physical"

and added "neuromusculoskeletal, sensory-perceptual, sensory-integrative and modulation, visual, mental and", after "cognitive", deleted "neuromuscular and sensory", and after "functions", added "pain tolerance and management, developmental skills"; in Subparagraph C(6)(e), after "caregivers", added "groups, populations"; in Subparagraph C(6)(h), after "modification of", added "home, work, school and community"; in Subparagraph C(6)(i), after "training in", added "seating and positioning"; in Subparagraph C(6)(j), after "including", deleted "wheelchair", and after "management", added "of wheelchairs and other mobility devices"; added new Subparagraph C(6)(k) and redesignated former Paragraphs C(11) through C(13) as Subparagraphs C(6)(l) through C(6)(n), respectively; in Subparagraph C(6)(m), after "swallowing", deleted "to enable eating and feeding performance"; added Subparagraphs C(6)(o) and C(6)(p); and added Subsection D.

61-12A-5. Supervision; required; defined. (Repealed effective July 1, 2028.)

Occupational therapy shall not be performed by an occupational therapy assistant or by any person practicing on a provisional permit unless the occupational therapy is supervised by an occupational therapist. The board shall adopt rules defining supervision.

History: 1978 Comp., § 61-12A-5, enacted by Laws 1996, ch. 55, § 5; 2005, ch. 199, § 5; 2019, ch. 5, § 3.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-5 NMSA 1978, as amended by Laws 1989, ch. 58 § 1, relating to the board of occupational therapy practice, and § 5 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2019 amendment, effective June 14, 2019, revised the provision requiring occupational assistants or

any person practicing on a provisional permit to be supervised by an occupational therapist; after "occupational therapy assistant", deleted "occupational therapy aide or technician", after "unless", deleted "such" and added "the occupational", and after "defining supervision", deleted "which definitions may include various categories such as 'close supervision', 'routine supervision' and 'general supervision'"; and deleted Subsection B.

The 2005 amendment, effective July 1, 2005, added Subsection B to describe an occupational therapy aide or technician.

61-12A-6. License required. (Repealed effective July 1, 2028.)

A. Unless licensed to practice the level of occupational therapy provided in the Occupational Therapy Act, a person shall not practice as an occupational therapist or occupational therapy assistant.

B. It is unlawful for a person not licensed pursuant to the Occupational Therapy Act or whose license has been denied, suspended or revoked in this or another state to hold himself out as an occupational therapist or occupational therapy assistant or to use words or titles containing "occupational therapist" or "occupational therapy assistant" that would indicate or imply that the person is licensed as an occupational therapist or occupational therapy assistant.

C. A facility or employer shall not represent that it offers occupational therapy unless it uses the services of a licensee pursuant to the provisions of the Occupational Therapy Act.

D. A person offering or assisting in the offering of occupational therapy shall be properly identified by a name badge or other identification indicating whether the person is an occupational therapist, an occupational therapy assistant, an occupational therapy aide or technician or a person practicing under a provisional permit.

History: 1978 Comp., § 61-12A-6, enacted by Laws 1996, ch. 55, § 6; 2005, ch. 199, § 6.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-6 NMSA 1978, as enacted by Laws 1983, ch. 267, § 6, relating to powers and duties of the board, and § 6 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, deleted "certified" and "registered" as qualifications to the terms "occupational therapy assistant" and "occupational therapist" respectively.

61-12A-7. Exemptions. (Repealed effective July 1, 2028.)

Nothing in the Occupational Therapy Act shall be construed as preventing or restricting the practice, services or activities of:

- A. a person engaged in the profession or occupation for which he is licensed in New Mexico;
- B. a person lawfully engaged in a profession or occupation known by a name other than occupational therapy when engaged in that profession or occupation;
- C. a person pursuing a course of study leading to a degree or certificate in occupational therapy in an educational program accredited or seeking accreditation by the accreditation council of occupational therapy education if the activities and services constitute part of the supervised course of study and if that person is designated by a title that clearly indicates his status as a student or trainee;
- D. a person fulfilling the supervised student field work experience requirement pursuant to the Occupational Therapy Act if the activities and services constitute part of the experience necessary to meet that requirement; and
- E. an occupational therapist or occupational therapy assistant licensed in another state from conducting continuing education, workshops or seminars in New Mexico.

History: 1978 Comp., § 61-12A-7, enacted by Laws 1996, ch. 55, § 7.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-7 NMSA 1978, as enacted by Laws 1983, ch. 267, § 7, relating to administrative provisions of

the board, and § 7 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

61-12A-8. Board created. (Repealed effective July 1, 2028.)

- A. The "board of examiners for occupational therapy" is created.
- B. The board shall be administratively attached to the regulation and licensing department.
- C. The board shall consist of five members appointed by the governor who have been residents of the state for at least two years preceding the appointment.
- D. Three members shall be licensed under the provisions of the Occupational Therapy Act; have a minimum of five years' professional experience, with two years' experience in New Mexico; and have not had their licenses suspended or revoked by this or any other state. One of the professional members may be an occupational therapy assistant and one of the professional members may be a retired occupational therapist or occupational therapy assistant, who has been retired for no more than five years at the time of appointment.
- E. Two members shall represent the public. The two public members shall have no direct interest in the profession of occupational therapy. The public members shall not:
 - (1) have been convicted of a felony;
 - (2) be habitually intemperate or be addicted to the use of habit-forming drugs or be addicted to any other vice to such a degree as to render the member unfit to fulfill his board duties and responsibilities; or
 - (3) be guilty of a violation of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978].
- F. Appointments shall be made for staggered terms of three years with no more than two terms ending at any one time. A board member shall not serve more than two consecutive terms. Vacancies shall be filled for the unexpired term by appointment by the governor prior to the next scheduled board meeting.
- G. An individual member of the board shall not be liable in a civil or criminal action for an act performed in good faith in the execution of his duties as a member of the board.
- H. Members of the board shall be reimbursed for per diem and travel expenses as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.
- I. A simple majority of the board members currently serving shall constitute a quorum of the board for the conduct of business.
- J. The board shall meet at least four times a year and at other times as it deems necessary. Additional meetings may be convened at the call of the president of the board or on the written

request of any two board members to the president. Meetings of the board shall be conducted in accordance with the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

K. A member failing to attend three consecutive meetings, unless excused as provided by board policy, shall automatically be recommended for removal as a member of the board.

L. At the beginning of each fiscal year, the board shall elect a president, vice president and secretary-treasurer.

History: 1978 Comp., § 61-12A-8, enacted by Laws 1996, ch. 55, § 8; 2003, ch. 408, § 13; 2005, ch. 199, § 7.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-8 NMSA 1978, as enacted by Laws 1983, ch. 267, § 8, relating to board officers, and § 8 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, provided in Subsection B that one professional member may be an occupational therapy assistant who has been retired for no more than five years at the time of appointment.

The 2003 amendment, effective July 1, 2003, added present Subsection B and redesignated the subsequent subsections accordingly; and added "Two members shall represent the public." at the beginning of present Subsection E.

61-12A-9. Board; powers and duties. (Repealed effective July 1, 2028.)

A. The board shall:

- (1) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the provisions of the Occupational Therapy Act;
- (2) use funds to meet the necessary expenses incurred in carrying out the provisions of the Occupational Therapy Act;
- (3) adopt a code of ethics;
- (4) enforce the provisions of the Occupational Therapy Act to protect the public by conducting hearings on charges relating to the discipline of licensees, including the denial, suspension or revocation of a license in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];
- (5) establish and collect fees;
- (6) provide for examination for and issuance, renewal and reinstatement of licenses;
- (7) establish, impose, collect and remit fines for violations of the Occupational Therapy Act to the current school fund;
- (8) appoint a registrar to keep records and minutes necessary to carry out the functions of the board; and
- (9) obtain the legal assistance of the attorney general.

B. The board may:

- (1) issue investigative subpoenas for the purpose of investigating complaints against licensees prior to the issuance of a notice of contemplated action;
- (2) hire or contract with an investigator to investigate complaints that have been filed with the board. The board shall set the compensation of the investigator to be paid from the funds of the board;
- (3) inspect establishments; and
- (4) designate hearing officers.

History: 1978 Comp., § 61-12A-9, enacted by Laws 1996, ch. 55, § 9; 2003, ch. 408, § 14; 2022, ch. 39, § 46.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-9 NMSA 1978, as enacted by Laws 1983, ch. 267, § 9, relating to the registrar, and § 9 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of examiners for occupational therapy is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters, and required the

board to remit money collected in fines to the current school fund; in Subsection A, Paragraph A(1), deleted "adopt, file, amend or repeal" and added "promulgate", after "rules", deleted "and regulations", and after "in accordance with the", deleted "Uniform Licensing" and added "State Rules", in Paragraph A(4), after "revocation of a license", added "in accordance with the Uniform Licensing Act", and in Paragraph A(7), after "collect", added "and remit", and after "Occupational Therapy Act", added "to the current school fund".

The 2003 amendment, effective July 1, 2003, deleted former Paragraph B(1), concerning hire of attorney, and redesignated the subsequent paragraphs accordingly.

61-12A-10. Board; administrative procedures. (Repealed effective July 1, 2028.)

The board shall appoint a registrar who is either the board member elected as the secretary-treasurer or such other person as the board may designate who is an employee of the state. The registrar of the board may receive reimbursement for necessary expenses incurred in carrying out his duties. The registrar shall keep a written record in which shall be registered the name, license number, date of license issuance, current address, record of annual license fee payments, minutes and any other data as the board deems necessary regarding licensees.

History: 1978 Comp., § 61-12A-10, enacted by Laws 1996, ch. 55, § 10; 2003, ch. 408, § 15.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-10 NMSA 1978, as enacted by Laws 1983, ch. 267, § 10, relating to issuance of license, and § 10 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2003 amendment, effective July 1, 2003, deleted former Subsection A, concerning employment and discharge; deleted the Subsection B designation; deleted "the board or" following "is an employee of" near the end of the first sentence; and deleted "and, if he is an employee, such compensation as the board may set" following "carrying out his duties" at the end of the second sentence.

61-12A-11. Requirements for licensure. (Repealed effective July 1, 2028.)

A. An applicant applying for a license as an occupational therapist or occupational therapy assistant shall file a written application provided by the board, accompanied by the required fees and documentation, and demonstrating to the satisfaction of the board that the applicant has:

(1) successfully completed the academic requirements of an educational program in occupational therapy that is either:

(a) accredited by the American occupational therapy association's accreditation council for occupational therapy education; or

(b) in the case of a foreign educational program, accepted by the national board for certification in occupational therapy when the therapist applies to take that board's examination;

(2) successfully completed a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where the occupational therapist or the occupational therapy assistant has met the academic requirements of Paragraph (1) of this subsection; provided that:

(a) an occupational therapist shall complete a minimum of twenty-four weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation; and

(b) an occupational therapy assistant shall complete a minimum of sixteen weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation;

(3) has passed an examination prescribed by the national board for certification in occupational therapy or the board; and

(4) has no record of unprofessional conduct or incompetence.

B. In the case of an occupational therapy assistant or a person practicing on a provisional permit, the applicant shall file with the board a signed, current statement of supervision by the occupational therapist who will be the responsible supervisor.

C. The board shall verify, as necessary, information contained on the completed application and any supporting documentation required to obtain a license.

History: 1978 Comp., § 61-12A-11, enacted by Laws 1996, ch. 55, § 11; 2005, ch. 199, § 8.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-11 NMSA 1978, as enacted by Laws 1983, ch. 267, § 11, relating to suspension and revocation of license, and § 11 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2005 amendment, effective July 1, 2005, deleted the former provision in Subsection A that a license to practice shall be issued to a person who files a completed application and who submits satisfactory evidence of completion of the listed requirements; deleted references to the American occupational therapy certification board in Subsections A(1)(b) and (3); and added Subsection A(2)(a) and (b) to provide minimum time for supervised fieldwork experience.

61-12A-12. Examinations. (Repealed effective July 1, 2028.)

The board shall require proof of passage of the national board for certification in occupational therapy examination. The board may require each applicant to pass an examination on the state laws and rules that pertain to the practice of occupational therapy.

History: 1978 Comp., § 61-12A-12, enacted by Laws 1996, ch. 55, § 12; 2005, ch. 199, § 9.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-12 NMSA 1978, as enacted by Laws 1983, ch. 267, § 12, relating to renewal of license, and § 12 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, deleted reference to the American occupational therapy certification board and deleted reference to regulations that pertain to the practice of occupational therapy.

61-12A-13. Provisional permits. (Repealed effective July 1, 2028.)

A provisional permit may be granted to a person who has completed the education and experience requirements of the Occupational Therapy Act. The permit shall allow the person to practice occupational therapy under the supervision of an occupational therapist. The provisional permit shall be valid until the date on which the results of the next qualifying examination have been made public. The provisional permit shall not be renewed if the applicant has failed the examination. The board shall verify, as necessary, information contained on the completed application and any supporting documentation required to obtain a license.

History: 1978 Comp., § 61-12A-13, enacted by Laws 1996, ch. 55, § 13; 2005, ch. 199, § 10.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-13 NMSA 1978, as enacted by Laws 1983, ch. 267, § 13, relating to requirements for licensure, and § 13 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, changed "a registered occupational therapist" to "an occupational therapist".

61-12A-14. Expedited licensure by endorsement. (Repealed effective July 1, 2028.)

A. The board shall grant a license to an applicant who presents a valid, unrestricted license as an occupational therapist or an occupational therapy assistant in another licensing jurisdiction and is in good standing with the licensing board of that licensing jurisdiction. The board shall, as soon as practicable but no later than thirty days after an out-of-state licensee files an application for an expedited license accompanied by required fees, process the application and issue the expedited license in accordance with Section 61-1-31.1 NMSA 1978.

B. If the out-of-state licensee was licensed in a jurisdiction that did not require passage of the national examination for certification in occupational therapy, the board may require the licensee to pass that examination to continue to be licensed in New Mexico.

C. The board shall determine the other states and territories of the United States and the District of Columbia from which it will not accept applicants for expedited licensure and the foreign countries from which it will accept applicants for expedited licensure. The board shall post the list of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: 1978 Comp., § 61-12A-14, enacted by Laws 1996, ch. 55, § 14; 2005, ch. 199, § 11; 2022, ch. 39, § 47.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-14 NMSA 1978, as enacted by Laws 1983, ch. 267, § 14, relating to waiver of requirements for licensure, and § 14 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure by endorsement,

provided that the board of examiners for occupational therapy shall issue an expedited license to a person who holds a valid, unrestricted license as an occupational therapist or an occupational therapy assistant issued by another licensing jurisdiction and is in good standing with the licensing board of that jurisdiction, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass

an examination to continue to be licensed in New Mexico, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "Expedited"; in Subsection A, after "The board", deleted "may" and added "shall", after "applicant who presents a", deleted "current" and added "valid, unrestricted", after "license", deleted "in

good standing", after "an occupational therapy assistant in another", deleted "state the District of Columbia or a territory of the United States that meets the requirements of Section 61-12A-11 NMSA 1978" and added the remainder of the subsection; and added Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2005 amendment, effective July 1, 2005, changed "a registered occupational therapist" to "an occupational therapist" and changed "a certified occupational therapy assistant" to "an occupational therapy assistant".

61-12A-15. License renewal. (Repealed effective July 1, 2028.)

A. Each renewal request shall contain the person's name, address and license number. After receipt of information and fees as prescribed by this section, the board shall issue a license certificate.

B. Licenses issued pursuant to the Occupational Therapy Act are subject to annual renewal upon submission of a renewal form provided by the board, payment of the annual renewal fee and the required proof of continuing education units or proof of competency as prescribed by the board. A license not renewed on the annual renewal date is expired.

C. If a person's license has been expired for five years or less, the person may renew the license upon submission of a renewal form provided by the board, the payment of the annual renewal fee, a late fee and the required proof of continuing education units for the period the license has been expired or proof of competency as prescribed by the board. If a person's license has been expired for more than five years, the person may not renew the license. The person may obtain a new license by compliance with the requirements and procedures for obtaining an original license and any additional proof of competency requested by the board.

D. If a person's license has been suspended, it shall not be renewed until it has been reinstated by the board. If a person's license has been suspended it is still subject to annual renewal. The person may renew the license as provided in this section, but renewal does not entitle the licensee, while the license is suspended, to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended.

E. If a person's license has been revoked on disciplinary grounds, and has been reinstated by the board, the licensee shall pay the annual renewal fee and any applicable late fee as a condition of reinstatement.

History: 1978 Comp., § 61-12A-15, enacted by Laws 1996, ch. 55, § 15.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-15 NMSA 1978, as enacted by Laws

1983, ch. 267, § 15, relating to denial of application, and § 15 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

61-12A-16. Display of license. (Repealed effective July 1, 2028.)

A. Each licensee shall display his current license certificate in a conspicuous place in the principal office where he practices occupational therapy. At secondary places of employment, documentation of license shall be verified by photocopy with a note attached indicating where the current license certificate is posted.

B. A consumer information sign shall be displayed in the principal place of practice. The consumer information sign shall read:

"Complaints regarding noncompliance with the Occupational Therapy Act can be directed to the board of examiners for occupational therapy."

History: 1978 Comp., § 61-12A-16, enacted by Laws 1996, ch. 55, § 16.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-16 NMSA 1978, as enacted by Laws

1983, ch. 267, § 16, relating to right of review, and § 16 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

61-12A-17. Inactive licenses. (Repealed effective July 1, 2028.)

A license in good standing may be transferred to inactive status upon written request to the board and payment of an annual inactive status fee as set by the board. Such request shall be made prior to the expiration of the license. The licensee shall not practice in New Mexico during the time the license is inactive. A licensee may reactivate his license upon submission of a renewal form provided by the board, the payment of the annual renewal fee for the current year, proof of continuing education units for the period of inactive status and any additional proof of competency requested and prescribed by the board.

History: 1978 Comp., § 61-12A-17, enacted by Laws 1996, ch. 55, § 17.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-17 NMSA 1978, as amended by Laws

1989, ch. 58, § 2, relating to board funds, and § 17 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

61-12A-18. Fees. (Repealed effective July 1, 2028.)

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable fees, including an initial licensure fee, an annual renewal fee, an examination fee, a late renewal fee and an inactive status fee. The initial licensure fee is not refundable and shall cover the cost of processing the application and shall include, for successful applicants, the initial annual renewal fee. The board may impose reasonable administration and duplicating fees or any penalties deemed appropriate.

History: 1978 Comp., § 61-12A-18, enacted by Laws 1996, ch. 55, § 18; 2020, ch. 6, § 30.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-18 NMSA 1978, as enacted by Laws 1983, ch. 267, § 18, relating to powers of the board, and

§ 18 of that act enacted a new section, effective July 1, 1996.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

61-12A-19. Uniform Licensing Act. (Repealed effective July 1, 2028.)

The Occupational Therapy Act is enforceable according to the procedures set forth in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

History: 1978 Comp., § 61-12A-19, enacted by Laws 1996, ch. 55, § 19.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-19 NMSA 1978, as enacted by Laws 1983, ch. 267, § 19, relating to license registration fees,

and § 19 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

61-12A-20. Fund created. (Repealed effective July 1, 2028.)

- A. The "board of examiners for occupational therapy fund" is created in the state treasury.
- B. Money received by the board pursuant to the Occupational Therapy Act shall be deposited in the fund. Money in the fund shall not revert to the general fund at the end of any fiscal year.
- C. Money in the fund is appropriated solely to the board for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Occupational Therapy Act.

History: 1978 Comp., § 61-12A-20, enacted by Laws 1996, ch. 55, § 20.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-20 NMSA 1978, as amended by Laws

1989, ch. 58, § 3, relating to termination of agency life, and § 20 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

61-12A-21. Penalties. (Repealed effective July 1, 2028.)

A. An unlicensed person, other than an occupational therapy aide or technician, occupational therapy student or occupational therapy assistant student or person practicing under a provisional permit, who practices occupational therapy is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

B. A person who represents that he offers occupational therapy services without utilizing a licensee is in violation of the Occupational Therapy Act and shall be subject to a fine equal to ten percent of billed charges for those services. In addition, the violator shall be required to utilize the services of a licensee in order to provide occupational therapy services.

C. The board shall deny an application for licensure if it finds that the applicant made false statements or provided false information in connection with an application for licensure.

History: Laws 1996, ch. 55, § 21.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

61-12A-22. Disciplinary action; denial, suspension or revocation. (Repealed effective July 1, 2028.)

In accordance with procedures established by the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, suspend or revoke any license or permit held or applied for under the Occupational Therapy Act upon the grounds that the licensee or applicant is incompetent, impaired or has engaged in unethical behavior. The board shall define such grounds by regulation. Disciplinary sanctions may also include probation, censure or reprimand, according to board regulations.

History: Laws 1996, ch. 55, § 22.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

61-12A-23. Criminal Offender Employment Act. (Repealed effective July 1, 2028.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Occupational Therapy Act.

History: Laws 1996, ch. 55, § 23.

Delayed repeals. — For the delayed repeal of this section, see 61-12A-24 NMSA 1978.

61-12A-24. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The board of examiners for occupational therapy is terminated on July 1, 2027 pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Occupational Therapy Act until July 1, 2028. Effective July 1, 2028, the Occupational Therapy Act is repealed.

History: Laws 1996, ch. 55, § 24; 1997, ch. 46, § 13; 2005, ch. 199, § 12; 2005, ch. 208, § 7; 2015, ch. 119, § 11; 2021, ch. 50, § 7.

The 2021 amendment, effective June 18, 2021, extended the sunset date for the board of examiners for occupational therapy, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the board of examiners for occupational therapy to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination date of the board of examiners from July 1, 2005 to July 1, 2015, changed the date to which the board shall continue to operate from July 1, 2006 to July 1, 2016 and changed the effective repeal date from July 1, 2006 to July 1, 2016.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences.

61-12A-25. Applicability to other health professions. (Repealed effective July 1, 2028.)

Nothing in the Occupational Therapy Act shall be construed as limiting the practice of other licensed and qualified health professionals in their specific disciplines.

History: Laws 2019, ch. 5, § 4.

Effective dates. — Laws 2019, ch. 5 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ARTICLE 12B

Respiratory Care

Sec.	Sec.
61-12B-1. Short title. (Repealed effective July 1, 2028.)	61-12B-10. Licensure; date required. (Repealed effective July 1, 2028.)
61-12B-2. Purpose of act. (Repealed effective July 1, 2028.)	61-12B-11. Fees. (Repealed effective July 1, 2028.)
61-12B-3. Definitions. (Repealed effective July 1, 2028.)	61-12B-12. Denial, suspension, revocation and reinstatement of licenses. (Repealed effective July 1, 2028.)
61-12B-4. License required; exceptions. (Repealed effective July 1, 2028.)	61-12B-13. Respiratory care fund created; disposition; method of payment. (Repealed effective July 1, 2028.)
61-12B-5. Advisory board created. (Repealed effective July 1, 2028.)	61-12B-14. Repealed.
61-12B-6. Department; duties and powers. (Repealed effective July 1, 2028.)	61-12B-15. Enforcement. (Repealed effective July 1, 2028.)
61-12B-7. Licensing by training and examination. (Repealed effective July 1, 2028.)	61-12B-16. Termination of board; delayed repeal. (Repealed effective July 1, 2028.)
61-12B-8. Expedited licensing without training and examination. (Repealed effective July 1, 2028.)	61-12B-17. Severability. (Repealed effective July 1, 2028.)
61-12B-9. Other licensing provisions. (Repealed effective July 1, 2028.)	

61-12B-1. Short title. (Repealed effective July 1, 2028.)

Chapter 61, Article 12B NMSA 1978 may be cited as the "Respiratory Care Act".

History: Laws 1984, ch. 103, § 1; 2001, ch. 188, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, substituted "Chapter 61, Article 12B NMSA 1978" for "This act".

61-12B-2. Purpose of act. (Repealed effective July 1, 2028.)

In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of respiratory care, it is necessary to provide laws and rules to govern the practice of respiratory care. The primary purpose of the Respiratory Care Act is to safeguard life and health and to promote the public welfare by licensing and regulating the practice of respiratory care in the state.

History: Laws 1984, ch. 103, § 2; 2001, ch. 188, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, inserted the first sentence and "primary" in the second sentence.

61-12B-3. Definitions. (Repealed effective July 1, 2028.)

As used in the Respiratory Care Act:

- A. "board" means the advisory board of respiratory care practitioners;
- B. "department" means the regulation and licensing department or that division of the department designated to administer the provisions of the Respiratory Care Act;

C. "respiratory care" means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation and care of patients with deficiencies and abnormalities that affect the cardiopulmonary system and associated aspects of other system functions, and the terms "respiratory therapy" and "inhalation therapy" where such terms mean respiratory care;

D. "practice of respiratory care" includes:

(1) direct and indirect cardiopulmonary care services that are of comfort, safe, aseptic, preventative and restorative to the patient;

(2) cardiopulmonary care services, including the administration of pharmacological, diagnostic and therapeutic agents related to cardiopulmonary care necessary to implement treatment, disease prevention, cardiopulmonary rehabilitation or a diagnostic regimen, including paramedical therapy and baromedical therapy;

(3) specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of cardiopulmonary abnormalities, including pulmonary function testing, hemodynamic and physiologic monitoring of cardiac function and collection of arterial and venous blood for analysis;

(4) observation, assessment and monitoring of signs and symptoms, general behavior, general physical response to cardiopulmonary care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics;

(5) implementation based on observed abnormalities, appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a physician authorized to practice medicine or other person authorized by law to prescribe, or the initiation of emergency procedures or as otherwise permitted in the Respiratory Care Act;

(6) establishing and maintaining the natural airways, insertion and maintenance of artificial airways, bronchopulmonary hygiene and cardiopulmonary resuscitation, along with cardiac and ventilatory life support assessment and evaluation; and

(7) the practice performed in a clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate or necessary by the department;

E. "expanded practice" means the practice of respiratory care by a respiratory care practitioner who has been prepared through a formal training program to function beyond the scope of practice of respiratory care as defined by rule of the department;

F. "respiratory care practitioner" means a person who is licensed to practice respiratory care in New Mexico;

G. "respiratory care protocols" means a predetermined, written medical care plan, which can include standing orders;

H. "respiratory therapy training program" means an education course of study as defined by rule of the department; and

I. "superintendent" means the superintendent of regulation and licensing.

History: Laws 1984, ch. 103, § 3; 1987, ch. 329, § 1; 1987, ch. 346, § 1; 1993, ch. 150, § 1; 2001, ch. 188, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, in Subsection D, inserted "or other person authorized by law to prescribe," in Paragraph (5), substituted "assessment and evaluation" for "diagnosis" in Paragraph (6), in Paragraph (7), deleted "of respiratory care" following "practice", substituted "department" for "board"; in Subsection E, substituted "been prepared through a formal training program" for "completed a recognized program of study", inserted "as defined by rule of the department"; in Subsection F, deleted the last sentence, which read "The respiratory care practitioner may transcribe and implement a physician's written and verbal orders pertaining to the practice of respiratory care and"; redesignated the language formerly in Subsection F beginning "respiratory care protocols" as

Subsection G; redesignated the former Subsections G and H as Subsections H and I; in present Subsection H, substituted "an education course of study as defined by rule of the department" for "a program accredited or recognized by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education".

The 1993 amendment, effective June 18, 1993, substituted "cardiopulmonary" for "pulmonary" or "respiratory" in Paragraphs (1), (2) and (4) of Subsection D; added "and baromedical therapy" at the end of Paragraph (2) of Subsection D; inserted "and venous" near the end of Paragraph (3) of Subsection D; deleted "under the laws of New Mexico" following "practice medicine" in Paragraph (5) of Subsection D; added current Subsection E; and redesignated former Subsections E to G as Subsections F to H.

61-12B-4. License required; exceptions. (Repealed effective July 1, 2028.)

A. No person shall practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed pursuant to the provisions of the Respiratory Care Act, except as otherwise provided by that act.

B. A respiratory care practitioner may transcribe and implement the written or verbal orders of a physician or other person authorized by law to prescribe pertaining to the practice of respiratory care and respiratory care protocols.

C. Nothing in the Respiratory Care Act is intended to limit, preclude or otherwise interfere with:

- (1) the practices of other persons and health providers licensed by appropriate agencies of New Mexico;
- (2) self-care by a patient;
- (3) gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner; or
- (4) respiratory care services rendered in case of an emergency.

D. An individual who has demonstrated competency in one or more areas covered by the Respiratory Care Act may perform those functions that he is qualified by examination to perform; provided that the examining body or testing entity is recognized nationally for expertise in evaluating the competency of persons performing those functions covered by that act or department rules. The department shall establish by rule those certifying agencies and testing entities that are acceptable to the department.

E. The Respiratory Care Act does not prohibit qualified clinical laboratory personnel who work in facilities licensed pursuant to the provisions of the federal Clinical Laboratories Improvement Act of 1967, as amended, or accredited by the college of American pathologists or the joint commission on accreditation of healthcare organizations from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified.

History: Laws 1984, ch. 103, § 4; 1987, ch. 55, § 1; 1993, ch. 150, § 2; 2001, ch. 188, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

For the federal Clinical Laboratories Improvement Act of 1967, see 42 U.S.C.S. § 263a.

The 2001 amendment, effective June 15, 2001, added Subsection B and redesignated the remaining subsections accordingly; in Subsection C, added the paragraph designations (1) to (4); inserted "rendered" in Paragraph (4); in present Subsection D, substituted language beginning "provided that the examining body" for "so long as the testing body offering the examination is certified by

the national commission for health certifying agencies"; and in present Subsection E, substituted "pursuant to the provisions of" for "by" and "healthcare organizations" for "hospitals".

The 1993 amendment, effective June 18, 1993, in Subsection D, inserted "as amended" following "Act of 1967" and substituted "commission on accreditation" for "commission for accreditation".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 26 to 29, 31 to 33, 51 to 61, 63 to 65, 67, 68, 74 to 120, 125.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 11 to 13, 19 to 28, 35 to 52.

61-12B-5. Advisory board created. (Repealed effective July 1, 2028.)

A. The superintendent shall appoint an "advisory board of respiratory care practitioners" consisting of five members as follows:

- (1) one physician licensed in New Mexico who is knowledgeable in respiratory care;
- (2) two respiratory care practitioners who are residents of New Mexico, licensed by the department and in good standing. At least one of the respiratory care practitioners shall have been actively engaged in the practice of respiratory care for at least five years immediately preceding appointment or reappointment; and
- (3) two public members who are residents of New Mexico. A public member shall not have been licensed as a respiratory care practitioner nor shall he have any financial interest, direct or indirect, in the occupation to be regulated.

B. The board shall be administratively attached to the department.

C. A member shall serve no more than two consecutive three-year terms.

D. A member of the board shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance in connection with the discharge of his duties as a board member.

E. A member failing to attend three consecutive regular and properly noticed meetings of the board without a reasonable excuse shall be automatically removed from the board.

F. In the event of a vacancy, the board shall immediately notify the superintendent of the vacancy. Within ninety days of receiving notice of a vacancy, the superintendent shall appoint a qualified person to fill the remainder of the unexpired term.

G. A majority of the board members currently serving constitutes a quorum of the board.

H. The board shall meet at least twice a year and at such other times as it deems necessary.

I. The board shall annually elect officers as deemed necessary to administer its duties.

History: Laws 1984, ch. 103, § 5; 1987, ch. 329, § 2; 1989, ch. 109, § 1; 1996, ch. 51, § 9; 2001, ch. 188, § 6; 2003, ch. 408, § 16.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2003 amendment, effective July 1, 2003, added present Subsection B and redesignated the subsequent subsections accordingly.

The 2001 amendment, effective June 15, 2001, inserted "who are residents of New Mexico, licensed by the department and in good standing. At least one of the respiratory care practitioners shall have been actively engaged in the practice of respiratory care for at least five years immediately preceding appointment or reappointment" in Paragraph A(2); deleted the last sentence of Subsection C, which read, "Three members, including at least one public member, constitute a quorum"; in Subsection

D, deleted "after proper notice" following "failing" and inserted "regular and properly noticed" following "three consecutive"; and added Subsections E to H.

The 1996 amendment, effective March 5, 1996, substituted "eight" for "five" in Subsection A, "two" for "three" in Paragraph A(2) and "two" for "four" in Paragraph A(3), rewrote Subsection B, and added the last sentence in Subsection C.

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "eight" for "five" in the introductory paragraph, substituted the present language of the first sentence of Paragraph (3) for "one public member who is a resident of New Mexico", and made minor stylistic changes in the second sentence of Paragraph (3); substituted the present language of Subsection B(1) for "one member for a one-year term"; and added Subsection D.

61-12B-6. Department; duties and powers. (Repealed effective July 1, 2028.)

A. The department, in consultation with the board, shall:

(1) evaluate the qualifications of applicants and review the required examination results of applicants. The department may recognize the entry level examination written by the national board for respiratory care or a successor board;

(2) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to implement the provisions of the Respiratory Care Act;

(3) issue and renew licenses and temporary permits to qualified applicants who meet the requirements of the Respiratory Care Act; and

(4) administer, coordinate and enforce the provisions of the Respiratory Care Act and investigate persons engaging in practices that may violate the provisions of that act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

B. The department, in consultation with the board, may:

(1) conduct examinations of respiratory care practitioner applicants as required by rules of the department;

(2) reprimand, fine, deny, suspend or revoke a license or temporary permit to practice respiratory care as provided in the Respiratory Care Act in accordance with the provisions of the Uniform Licensing Act;

(3) for the purpose of investigating complaints against applicants and licensees, issue investigative subpoenas prior to the issuance of a notice of contemplated action as set forth in the Uniform Licensing Act;

(4) enforce and administer the provisions of the Impaired Health Care Provider Act [Chapter 61, Article 7 NMSA 1978] and promulgate rules to implement the provisions of that act as it relates to respiratory care practitioners;

- (5) promulgate rules, including disciplinary guidelines, relating to impaired practitioners;
- (6) promulgate rules to allow the interstate transport of patients; and
- (7) promulgate rules to determine and regulate the scope and qualifications for expanded practice for respiratory care practitioners.

History: Laws 1984, ch. 103, § 6; 1993, ch. 150, § 3; 2001, ch. 188, § 7; 2022, ch. 39, § 48.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the advisory board of respiratory care practitioners is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; in Subsection A, Paragraph A(2), after "promulgate rules", deleted "as may be necessary" and added "in accordance with the State Rules Act", and in Paragraph A(4), after "the provisions of that act", added "in accordance with the Uniform Licensing Act"; and in Subsection B, Paragraph B(4), after "promulgate rules", deleted "pursuant to" and added "to implement provisions of", and after "that act", added "as it relates to respiratory care practitioners".

The 2001 amendment, effective June 15, 2001, re-wrote Paragraph A(2) which formerly read "collect and review data and statistics with respect to respiratory care, treatment, services or facilities for the purpose of granting, suspending or revoking respiratory care licenses"; in Paragraph A(3) inserted "and renew" following "issue" and "qualified" preceding "applicants"; deleted Paragraph A(5) which read "adopt rules and regulations to allow the interstate transport of patients"; in Paragraph B(1), deleted "any required" following "conduct" and inserted "as required by rules of the department"; inserted "reprimand, fine" in Paragraph B(2); and added Paragraphs B(3) to (7).

The 1993 amendment, effective June 18, 1993, in Subsection A, added Paragraph (5) and made minor stylistic changes.

61-12B-7. Licensing by training and examination. (Repealed effective July 1, 2028.)

A person desiring to become licensed as a respiratory care practitioner shall make application to the department on a written form and in such manner as the department prescribes, pay all required application fees and certify and furnish evidence to the department that the applicant:

- A. has successfully completed a training program as defined in the Respiratory Care Act and set forth by rules of the department;
- B. has passed an entry level examination, as specified by rules of the department, for respiratory care practitioners administered by the national board for respiratory care or a successor board; and
- C. has successfully completed other training or education programs and passed other examinations as set forth by rules of the department.

History: Laws 1984, ch. 103, § 7; 1993, ch. 150, § 4; 2001, ch. 188, § 8; 2022, ch. 39, § 49.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised qualifications for licensure as a respiratory care practitioner; deleted Subsection C, which provided "is of good moral character"; and redesignated former Subsection D as Subsection C.

The 2001 amendment, effective June 15, 2001, deleted the former Subsection A designation and redesignated

former Paragraphs A(1) to (4) as Subsections A to D; and deleted former Subsection B which read "The department, in consultation with the board, shall develop rules and regulations that describe the scope and qualifications for expanded practice roles of respiratory care practitioners".

The 1993 amendment, effective June 18, 1993, substituted the language beginning "the national board" for "a nationally recognized organization for respiratory care" at the end of Paragraph (2) of Subsection A and added Subsection B.

61-12B-8. Expedited licensing without training and examination. (Repealed effective July 1, 2028.)

A. The department shall waive the education and examination requirements for an applicant who presents proof that the applicant holds a valid, unrestricted license in another licensing jurisdiction and is in good standing with that licensing jurisdiction.

B. The department shall, as soon as practicable but no later than thirty days after an out-of-state licensee files an application paid the required fees, process the application and issue the expedited license in accordance Section 61-1-31.1 NMSA 1978.

C. The department shall determine the states and territories of the United States and the District of Columbia from which it will not accept applicants for expedited licensure and the foreign

countries from which it will accept applicants for expedited licensure. The department shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: Laws 1984, ch. 103, § 8; 1993, ch. 150, § 5; 2001, ch. 188, § 9; 2022, ch. 39, § 50.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the advisory board of respiratory care practitioners shall issue an expedited license without examination to a person who holds a valid, unrestricted license in another licensing jurisdiction and is in good standing with that licensing jurisdiction, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "Expedited"; in Subsection A, deleted "he is currently licensed in good standing in a jurisdiction

that has standards for licensure that are at least equal to those for licensure in New Mexico as required by the Respiratory Care Act" and added "the applicant holds a valid, unrestricted license in another licensing jurisdiction and is in good standing with that licensing jurisdiction"; and added Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2001 amendment, effective June 15, 2001, substituted "that he is currently licensed in good standing" for "of current licensure", substituted "jurisdiction" for "state", and inserted "for licensure that are" following "standards".

The 1993 amendment, effective June 18, 1993, inserted "training and" in the section heading; deleted the subsection designation "A" at the beginning of the section; substituted "required by the Respiratory Care Act" for "determined by the department" at the end of the section; and deleted former Subsection B, pertaining to the conditions for issuance of a license to a practitioner without the education and examination requirements.

61-12B-9. Other licensing provisions. (Repealed effective July 1, 2028.)

A. The department, in consultation with the board, shall adopt rules for mandatory continuing education requirements that shall be completed as a condition for renewal of a license issued pursuant to the provisions of the Respiratory Care Act.

B. The department, in consultation with the board, may adopt rules for issuance of temporary permits to students and graduates of approved training programs to practice limited respiratory care under the direct supervision of a licensed respiratory care practitioner or physician. Rules shall be adopted defining the terms "student" and "direct supervision".

C. A license issued by the department shall describe the licensed person as a "respiratory care practitioner licensed by the New Mexico regulation and licensing department".

D. Unless licensed as a respiratory care practitioner pursuant to the provisions of the Respiratory Care Act, no person shall use the title "respiratory care practitioner", the abbreviation "R.C.P." or any other title or abbreviation to indicate that the person is a licensed respiratory care practitioner.

E. A copy of a valid license or temporary permit issued pursuant to the Respiratory Care Act shall be kept on file at the respiratory care practitioner's or temporary permittee's place of employment.

F. A respiratory care practitioner license shall expire on September 30, annually or biennially, as provided by rules of the department.

History: Laws 1984, ch. 103, § 9; 1987, ch. 329, § 3; 1993, ch. 150, § 6; 1996, ch. 51, § 10; 2001, ch. 188, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, in Subsections A and B, deleted "and regulations" following "rules"; in Subsection B, deleted "for the purposes of the Respiratory Care Act" following "defining"; deleted "and shall be displayed in the licensee's place of business" from the end of Subsection C; in Subsection E, substituted "kept on file" for "displayed" and inserted "or temporary

permittee's"; and rewrote Subsection F, which formerly read "Licenses, including initial licenses, shall be issued for a period of two years".

The 1996 amendment, effective March 5, 1996, made stylistic changes in Subsections A and D, added "and shall be displayed in the licensee's place of business" at the end of Subsection B, and substituted "displayed" for "kept on file" in Subsection E.

The 1993 amendment, effective June 18, 1993, in Subsection E, inserted "copy of the" preceding "valid" and substituted "kept on file" for "displayed".

61-12B-10. Licensure; date required. (Repealed effective July 1, 2028.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern consideration of criminal records required or permitted by the Respiratory Care Act.

History: Laws 1984, ch. 103, § 10; 2001, ch. 188, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, rewrote the section which formerly read "No person shall be required to be licensed as a respiratory care practitioner until October 1, 1984."

61-12B-11. Fees. (Repealed effective July 1, 2028.)

A. Except as provided in Section 61-1-34 NMSA 1978, the superintendent, in consultation with the board, shall by rule establish a schedule of reasonable fees for licenses, temporary permits and renewal of licenses for respiratory care practitioners.

B. The initial application fee shall be set in an amount not to exceed one hundred fifty dollars (\$150).

C. A license renewal fee shall be established in an amount not to exceed one hundred fifty dollars (\$150).

History: Laws 1984, ch. 103, § 11; 1987, ch. 329, § 4; 2001, ch. 188, § 12; 2020, ch. 6, § 31.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military

service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2001 amendment, effective June 15, 2001, in Subsection A, inserted "by rule" preceding "establish"; and in Subsection C, deleted "biennial" preceding "license".

61-12B-12. Denial, suspension, revocation and reinstatement of licenses. (Repealed effective July 1, 2028.)

A. The superintendent in consultation with the board and in accordance with the rules set forth by the department and the procedures set forth in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] may take disciplinary action against a license or temporary permit held or applied for pursuant to the Respiratory Care Act for the following causes:

(1) fraud or deceit in the procurement of or attempt to procure a license or temporary permit;

(2) imposition of any disciplinary action for an act that would be grounds for disciplinary action by the department pursuant to the Respiratory Care Act or as set forth by rules of the department upon a person by an agency of another jurisdiction that regulates respiratory care;

(3) conviction of a crime that substantially relates to the qualifications, functions or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction;

(4) impersonating or acting as a proxy for an applicant in an examination given pursuant to provisions of the Respiratory Care Act;

(5) habitual or excessive use of intoxicants or drugs;

(6) gross negligence as defined by rules of the department in the practice of respiratory care;

(7) violating a provision of the Respiratory Care Act or a rule duly adopted pursuant to that act or aiding or abetting a person to violate a provision of or a rule adopted pursuant to that act;

(8) engaging in unprofessional conduct as defined by rules set forth by the department;

(9) committing a fraudulent, dishonest or corrupt act that is substantially related to the qualifications, functions or duties of a respiratory care practitioner;

(10) practicing respiratory care without a valid license or temporary permit;

(11) aiding or abetting the practice of respiratory care by a person who is not licensed or who has not been issued a temporary permit by the department;

(12) conviction of a felony. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction;

(13) violating a provision of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];

(14) failing to furnish the department or its investigators or representatives with information requested by the department in the course of an official investigation;

(15) practicing beyond the scope of respiratory care as defined in the Respiratory Care Act or as set forth by rules of the department; or

(16) surrendering a license, certificate or permit to practice respiratory care in another jurisdiction while an investigation or disciplinary proceeding is pending for an act or conduct that would constitute grounds for disciplinary action under the Respiratory Care Act.

B. The department, in consultation with the board, may impose conditions on and promulgate rules relating to the reapplication or reinstatement of applicants, licensees or temporary permittees who have been subject to disciplinary action by the department.

History: Laws 1984, ch. 103, § 12; 1987, ch. 329, § 5; 1993, ch. 150, § 7; 2001, ch. 188, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, rewrote Subsection A, which formerly read "The superintendent may refuse to issue or may suspend or revoke any license in accordance with the procedures set forth in the Uniform Licensing Act for the following causes:"; rewrote Paragraph A(1), which formerly read "fraud in the procurement of any license under that act"; rewrote Paragraph A(2) which formerly read "imposition of any disciplinary action upon a person by an agency of another state which regulates respiratory care but not to exceed

the period or extent of such action"; substituted "pursuant to provisions of the Respiratory Care Act" for "under that act" in Paragraph A(4); rewrote Paragraph A(6), which formerly read "gross negligence in practice as a respiratory care practitioner"; inserted "as defined by rules set forth by the department" in Paragraph A(8); added Paragraphs A(10) to A(16); rewrote Subsection B, which formerly provided for applications for reinstatement one year after a license was revoked, and gave the superintendent the power to accept, reject or require an examination of the applicant; and deleted Subsection C, regarding the reinstatement of licenses revoked due to the abuse of drugs.

The 1993 amendment, effective June 18, 1993, added Subsection C.

61-12B-13. Respiratory care fund created; disposition; method of payment. (Repealed effective July 1, 2028.)

A. There is created in the state treasury the "respiratory care fund".

B. All funds received by the superintendent and money collected under the Respiratory Care Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the respiratory care fund.

C. All amounts paid into the respiratory care fund shall be expended only pursuant to appropriation by the legislature and in accordance with the budget approved by the department of finance and administration and shall be used only for the purposes of implementing the provisions of the Respiratory Care Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

History: Laws 1984, ch. 103, § 13; 1987, ch. 329, § 6; 1989, ch. 109, § 2; 2001, ch. 188, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, substituted "Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund" for "All money unused at the end of the fiscal year shall remain in the respiratory care fund for use

in accordance with the provisions of the Respiratory Care Act" in Subsection C.

The 1989 amendment, effective June 16, 1989, in Subsection C, substituted all of the language of the first sentence beginning with "expended" for "subject to the order of the superintendent and shall be used only for the purposes of implementing the provisions of the Respiratory Care Act".

61-12B-14. Repealed.

Repeals. — Laws 2001, ch. 188, § 17 repealed 61-12B-14 NMSA 1978, as enacted by Laws 1984, ch. 103, § 14, regarding the creation of rules to implement the Respiratory

Care Act, effective June 15, 2001. For provisions of former section, see the 2000 NMSA 1978 on *NMOneSource.com*.

61-12B-15. Enforcement. (Repealed effective July 1, 2028.)

A. A person who violates a provision of the Respiratory Care Act is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

B. The department may bring civil action in any district court to enforce any of the provisions of the Respiratory Care Act.

History: Laws 1984, ch. 103, § 15; 2001, ch. 188, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, in Subsection A, substituted "A person who violates a" for

"Violation of any" and inserted "guilty of" and "and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978".

61-12B-16. Termination of board; delayed repeal. (Repealed effective July 1, 2028.)

The advisory board of respiratory care practitioners is terminated on July 1, 2027 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Respiratory Care Act until July 1, 2028. Effective July 1, 2028, the Respiratory Care Act is repealed.

History: Laws 1984, ch. 103, § 17; 1989, ch. 109, § 3; 1996, ch. 51, § 11; 1997, ch. 46, § 14; 2003, ch. 428, § 12; 2009, ch. 96, § 9; 2015, ch. 119, § 12; 2021, ch. 50, § 8.

The 2021 amendment, effective June 18, 2021, extended the sunset date for the advisory board of respiratory care practitioners, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the advisory board of respiratory care practitioners to July 1, 2021, and the repeal date to July 1, 2022.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, substituted "advisory board of respiratory care practitioners" for "board" and in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004" and inserted "according to the provisions of the Respiratory Care Act" in the last sentence.

The 1997 amendment, effective June 20, 1997, substituted "2003" for "1997" in the first sentence, and substituted "2004" for "1998" in the second and third sentences.

The 1996 amendment, effective March 5, 1996, substituted "1997" for "1995" once and "1998" for "1996" twice in the section.

The 1989 amendment, effective June 16, 1989, substituted "1995" for "1989" in the first sentence, and substituted "1996" for "1990" in the second and third sentences.

61-12B-17. Severability. (Repealed effective July 1, 2028.)

If any part or application of the Respiratory Care Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

History: Laws 2001, ch. 188, § 16. **Delayed repeals.** — For delayed repeal of this section, see 61-12B-16 NMSA 1978.

ARTICLE 12C

Massage Therapy Practice

Sec.

61-12C-1. Short title. (Repealed effective July 1, 2028.)

61-12C-2. Legislative purpose. (Repealed effective July 1, 2028.)

61-12C-2.1. Scope of practice. (Repealed effective July 1, 2028.)

61-12C-3. Definitions. (Repealed effective July 1, 2028.)

61-12C-4. Repealed.

61-12C-5. License required. (Repealed effective July 1, 2028.)

61-12C-5.1. Exemptions. (Repealed effective July 1, 2028.)

61-12C-6. Repealed.

Sec.

61-12C-7. Board created; membership. (Repealed effective July 1, 2028.)

61-12C-8. Board powers. (Repealed effective July 1, 2028.)

61-12C-9. Requirements for licensure of massage therapists. (Repealed effective July 1, 2028.)

61-12C-10. Requirements for registration of massage therapy schools. (Repealed effective July 1, 2028.)

61-12C-10.1. Massage therapy school registration, renewal, suspension and revocation. (Repealed effective July 1, 2028.)

Sec.
 61-12C-11. Display of license or registration. (Repealed effective July 1, 2028.)
 61-12C-12. Assignability of license. (Repealed effective July 1, 2028.)
 61-12C-13. Examinations. (Repealed effective July 1, 2028.)
 61-12C-14. Temporary license. (Repealed effective July 1, 2028.)
 61-12C-15. Repealed.
 61-12C-16. Expedited licensure by credentials. (Repealed effective July 1, 2028.)
 61-12C-17. License renewal; continuing education. (Repealed effective July 1, 2028.)
 61-12C-18. Inactive status. (Repealed effective July 1, 2028.)
 61-12C-19. Repealed.
 61-12C-20. License fees. (Repealed effective July 1, 2028.)

Sec.
 61-12C-21. Advertising. (Repealed effective July 1, 2028.)
 61-12C-22. Power of county or municipality to regulate massage. (Repealed effective July 1, 2028.)
 61-12C-23. Fund created. (Repealed effective July 1, 2028.)
 61-12C-24. Suspension, revocation and reinstatement of licenses. (Repealed effective July 1, 2028.)
 61-12C-24.1. Denial of license. (Repealed effective July 1, 2028.)
 61-12C-25. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)
 61-12C-26. Protected actions. (Repealed effective July 1, 2028.)
 61-12C-27. Offenses; criminal penalties. (Repealed effective July 1, 2028.)
 61-12C-28. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

61-12C-1. Short title. (Repealed effective July 1, 2028.)

Chapter 61, Article 12C NMSA 1978 may be cited as the "Massage Therapy Practice Act".

History: Laws 1991, ch. 147, § 1; 1993, ch. 173, § 1; 1999, ch. 240, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, purported to amend this section but made no change.

The 1993 amendment, effective June 18, 1993, substituted "Chapter 61, Article 12C NMSA 1978" for "Sections 1 through 25 of this act".

61-12C-2. Legislative purpose. (Repealed effective July 1, 2028.)

In the interest of public health, safety and welfare and to protect the public from unlawful, improper and incompetent practice of massage therapy, it is necessary to regulate that practice.

History: Laws 1991, ch. 147, § 2; 1999, ch. 240, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, rewrote the section, which formerly read: "The legislature

recognizes that the practice of massage therapy is potentially dangerous to the public. Therefore, it is necessary and in the interest of public health, safety and welfare to regulate the practice of massage therapy".

61-12C-2.1. Scope of practice. (Repealed effective July 1, 2028.)

The practice of massage therapy consists of the assessment of the soft tissue structures of the body; the treatment and prevention of physical dysfunction and pain of soft tissue; and joint movement within normal physiologic range of motion to relieve pain or to develop, maintain, rehabilitate or augment physical function.

History: Laws 2019, ch. 40, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

Emergency clauses. — Laws 2019, ch. 40, § 15 contained an emergency clause and was approved February 4, 2019.

61-12C-3. Definitions. (Repealed effective July 1, 2028.)

As used in the Massage Therapy Practice Act:

A. "board" means the massage therapy board;
 B. "continuing education" means courses, seminars, workshops and classes in areas related to the practice of massage therapy, such as:

- (1) massage;
- (2) bodywork;
- (3) health care;

- (4) psychology;
- (5) anatomy and physiology;
- (6) business;
- (7) insurance;
- (8) ethics;
- (9) professional development;
- (10) movement therapy;
- (11) stress management;
- (12) exempt modalities listed in Subsection C of Section 61-12C-5.1 NMSA 1978;
- (13) cardiopulmonary resuscitation or first aid; and
- (14) complementary alternative medicine modalities determined by the board to be related to the practice of massage therapy;

C. "continuing education provider" means:

- (1) an individual who was an active New Mexico registered independent massage therapy instructor on the effective date of this 2019 act;
- (2) a massage therapy school regulated by the requisite regulatory agency where the massage therapy school is located;
- (3) a national or international professional association for massage therapists;
- (4) an individual or an organization approved by a national or international massage therapy continuing education approval agency;
- (5) a health care professional organization; or
- (6) accredited post-secondary educational institutions;

D. "department" means the regulation and licensing department;

E. "jurisprudence" means the statutes and rules of the state pertaining to the practice of massage therapy;

F. "massage therapist" means an individual licensed to practice massage therapy pursuant to the Massage Therapy Practice Act;

G. "massage therapy" means the treatment of soft tissues for therapeutic purposes, primarily comfort and relief of pain; it is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Synonymous terms for massage therapy include massage, therapeutic massage, body massage, myomassage, bodywork, body rub or any derivation of those terms. "Massage therapy" does not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic, physical therapy, occupational therapy, acupuncture or podiatry is required by law; and

H. "massage therapy school" means a facility providing an educational program in massage therapy that is registered with the board.

History: Laws 1991, ch. 147, § 3; 1993, ch. 173, § 2; 1999, ch. 240, § 3; 2019, ch. 40, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, defined "continuing education" and "continuation education provider" as used in the Massage Therapy Practice Act; added new Subsections B and C, and redesignated former Subsections B through F as Subsections D through H, respectively.

The 1999 amendment, effective July 1, 1999, deleted former Subsection A which defined "approved massage therapy school"; redesignated former Subsections B and C as Subsections A and B; added Subsection C; in Subsection D, substituted "a person licensed to practice massage

therapy pursuant to the Massage Therapy Practice Act" for "a person who uses the title of massage therapist, is licensed pursuant to the Massage Therapy Practice Act and administers massage therapy for compensation"; in Subsection E, substituted the language beginning "primarily comfort and relief of pain" for "as defined in Section 61-12C-4 NMSA 1978"; deleted former Subsection F, which defined "jurisprudence"; and added Subsection F.

The 1993 amendment, effective June 18, 1993, substituted "registered with" for "certified by" in Subsection A; inserted "therapy" preceding "for compensation" in Subsection D; substituted "Section 61-12C-4 NMSA 1978" for "Section 4 of the Massage Therapy Practice Act" in Subsection E; added Subsection F; and made minor stylistic changes throughout the section.

61-12C-4. Repealed.

Repeals. — Laws 1999, ch. 240, § 20 repealed 61-12C-4 NMSA 1978, as enacted by Laws 1991, ch. 147, § 4, defining "massage therapy", effective July 1, 1999. For

provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*. For recent comparable provisions, see 61-12C-3 NMSA 1978.

61-12C-5. License required. (Repealed effective July 1, 2028.)

A. An individual shall not provide or offer to provide massage therapy for compensation unless that individual is a massage therapist.

B. An individual shall not use the title of or make any representation as being a massage therapist or use any other title, abbreviations, letters, figures, signs or devices that indicate the individual is a massage therapist unless the individual is a massage therapist.

History: Laws 1991, ch. 147, § 5; 1993, ch. 173, § 4; 1999, ch. 240, § 4; 2019, ch. 40, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors"; and deleted former Subsections C and D, which related to massage therapy instructors and massage therapy schools.

The 1999 amendment, effective July 1, 1999, in Subsection A, substituted "A person shall not provide or offer to provide massage therapy for compensation unless that

person is a massage therapist" for "it is unlawful for any person to practice massage therapy for compensation to offer services as a massage therapist for compensation or to purport to be a massage therapist unless that person possesses a license to practice massage therapy under the provisions of the Massage Therapy Practice Act and"; in Subsection B, substituted "unless he is a massage therapist" for "unless he is licensed to practice massage therapy pursuant to the provisions of the Massage Therapy Practice Act"; and added Subsections C and D.

The 1993 amendment, effective June 18, 1993, deleted "licensed" preceding "massage" in two places in Subsection B.

61-12C-5.1. Exemptions. (Repealed effective July 1, 2028.)

Nothing in the Massage Therapy Practice Act shall be construed to prevent:

A. qualified members of other recognized professions that are licensed or regulated under New Mexico law from rendering services within the scope of their licenses or regulations; provided they do not represent themselves as massage therapists;

B. students from rendering massage therapy services within the course of study of a registered massage therapy school; and

C. sobadores; Hispanic traditional healers; Native American healers; reflexologists whose practices are limited to hands, feet and ears; practitioners of polarity, Trager approach, Feldenkrais method, craniosacral therapy, Rolfing structural integration, reiki, ortho-bionomy or ch'i gung; or practitioners of healing modalities not listed in this subsection who do not manipulate the soft tissues for therapeutic purposes from practicing those skills. An exempt practitioner who applies for a license pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements of that act.

History: Laws 2001, ch. 121, § 1; 2007, ch. 174, § 1; 2019, ch. 40, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors"; and deleted former Subsection C, which related to visiting

massage therapy instructors, and redesignated former Subsection D as Subsection C.

The 2007 amendment, effective June 15, 2007, exempted practitioners of polarity, Trager approach, Feldenkrais method, craniosacral therapy, Rolfing structural integration, reiki, ortho-bionomy or ch'i gung and other practitioners of healing modalities who do not manipulate the soft tissues.

61-12C-6. Repealed.

Repeals. — Laws 1999, ch. 240, § 20 repealed 61-12C-6 NMSA 1978, as enacted by Laws 1991, ch. 147, § 6, relating to exemptions, effective July 1, 1999. For provisions

of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

61-12C-7. Board created; membership. (Repealed effective July 1, 2028.)

A. The "massage therapy board" is created. The board is administratively attached to the department.

B. The board consists of five members who are New Mexico residents. Members of the board shall be appointed by the governor to terms of four years. The terms shall be staggered, and the governor shall make appointments of two two-year terms, two three-year terms and one four-year term, if necessary to produce staggered terms. Three members of the board shall be massage therapists, each with at least five years of massage therapy practice and who are actively engaged in

the practice of massage therapy during their tenure as members. Two members of the board shall be public members who have not been licensed and have no financial interest, direct or indirect, in the profession of massage therapy.

C. Each member of the board shall hold office until a successor has been appointed and qualified.

D. No board member shall serve more than two full consecutive terms.

E. The board shall elect annually a chair and other officers as it deems necessary. The board shall meet as often as necessary for the conduct of business, but no less than twice a year. Meetings shall be held in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. Three members, at least one of whom must be a public member, shall constitute a quorum.

F. A board member may be recommended for removal as a member of the board for failing to attend, after proper notice, three consecutive board meetings.

G. Members of the board shall be reimbursed as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 1991, ch. 147, § 7; 1993, ch. 173, § 6; 1999, ch. 240, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, substituted "massage therapy board" for "board of massage therapy" in Subsection A; in Subsection B, inserted "to terms of four years" in the second sentence, inserted the third sentence, substituted "massage therapy practice and who are actively engaged in the practice of massage therapy during their tenure as members" for "massage therapy practice in New Mexico" in the fourth sentence, deleted the former sixth sentence relating to the initial three professional members appointed to the board and their licensure, and made stylistic changes; in Subsection

C, deleted "until the expiration of the term for which appointed or" preceding "until a successor"; in Subsection D, substituted "two full consecutive terms" for "two consecutive terms"; in Subsection E, rewrote the third sentence, which formerly read "Meetings shall be called by the chairman or upon the written request of three or more members of the board", and substituted "is a public member" for "must be a public member" in the fourth sentence.

The 1993 amendment, effective June 18, 1993, inserted "each" in the third sentence of Subsection B; deleted former Subsection C, pertaining to initial appointments to the board; redesignated former Subsections D to F as Subsections C to E; added "and qualified" at the end of Subsection C; and added current Subsection F.

61-12C-8. Board powers. (Repealed effective July 1, 2028.)

The board has the power to:

A. adopt and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules necessary to carry out the provisions of the Massage Therapy Practice Act, in accordance with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978];

B. provide for the evaluation of the qualifications of applicants for licensure as a massage therapist or registration as a massage therapy school under the Massage Therapy Practice Act;

C. provide for the issuance of massage therapist licenses to applicants who meet the requirements of the Massage Therapy Practice Act;

D. establish minimum curricula for massage therapy schools and provide for the issuance and revocation of massage therapy school registrations;

E. establish instructor qualifications for hands-on massage therapy instruction within the minimum curricula;

F. provide for the inspection, when required, of the business premises of any licensee or registrant during regular business hours;

G. establish minimum training and educational standards for licensure as a massage therapist;

H. pursuant to the Uniform Licensing Act, conduct hearings on charges against applicants or licensees and take actions described in Section 61-1-3 NMSA 1978;

I. bring an action for injunctive relief in district court seeking to enjoin a person from violating the provisions of the Massage Therapy Practice Act;

J. issue cease and desist orders to persons violating the provisions of the Massage Therapy Practice Act or any rule adopted by the board pursuant to that act;

K. adopt an annual budget;

L. adopt a code of professional conduct for massage therapists;

M. provide for the investigation of complaints against licensees and registrants; and

N. publish at least annually combined or separate lists of licensed massage therapists and registered massage therapy schools.

History: Laws 1991, ch. 147, § 8; 1993, ch. 173, § 7; 1999, ch. 240, § 7; 2019, ch. 40, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, expanded the powers of the massage therapy board, including the power to establish minimum curricula for massage therapy schools, to provide for the issuance and revocation of massage therapy school registrations, and to establish instructor qualifications within the minimum curricula, and removed references to "massage therapy instructors"; and added new Subsections D and E, and redesignated former Subsections D through L as Subsections F through N, respectively.

The 1999 amendment, effective July 1, 1999, substituted "Board powers" for "Board duties" in the section heading, and "The board has the power to" for "The board shall have the power to" in the first sentence; in Subsection D, substituted "any licensee or registrant" for "any licensee"; in Subsection E, inserted "as a massage therapist or registration as a massage therapy instructor"; rewrote Subsections F to H; in Subsection J, substituted "a code of

professional conduct" for "a code of ethics and"; in Subsection K, deleted "The board may issue investigation subpoenas prior to the issuance of a notice of contemplated action as set forth in Section 61-1-4 NMSA 1978"; and added Subsection L.

The 1993 amendment, effective June 18, 1993, inserted "have the power to" in the introductory paragraph; added current Subsection A; redesignated former Subsections A to I as Subsections B to J; substituted "provide for the evaluation of" for "evaluate" at the beginning and inserted "or registration" in Subsection B; substituted "provide for the issuance of" for "issue", inserted "or registrations" and substituted "who meet" for "to meet" in Subsection C; substituted "provide for the inspection" for "inspect" and inserted "of" in Subsection D; substituted "provide for the investigation of" for "investigate" in Subsection G; inserted "or registration" in Subsection H; deleted former Subsections J and K, pertaining to establishment of policies regarding continuing education and the adoption of rules and regulations; added current Subsection K; and made a minor stylistic change.

61-12C-9. Requirements for licensure of massage therapists. (Repealed effective July 1, 2028.)

A. The board shall issue a license to practice massage therapy to any individual who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

- (1) has reached the age of majority;
- (2) has completed all educational requirements established by the board; and
- (3) has completed at least six hundred fifty hours of education that includes at least five hundred hours of massage therapy instruction.

B. An initial license issued pursuant to this section may be for a period of up to two years pursuant to board rule.

History: Laws 1991, ch. 147, § 9; 1993, ch. 173, § 8; 1999, ch. 240, § 8; 2019, ch. 40, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors"; in the heading, deleted "and registration of massage therapy instructors"; and deleted Subsection B, which related to the registration of massage therapy instructors, and redesignated former Subsection C as Subsection B.

The 1999 amendment, effective July 1, 1999, substituted "licensure of massage therapists and registration of massage therapy instructors" for "licensure registered instructors" in the section heading; rewrote Subsection A(3); deleted former Subsections A(4) and B; redesignated

former Subsection C as Subsection B; deleted former Subsection B(2); and added Subsections B(2) and C.

The 1993 amendment, effective June 18, 1993, deleted "and registered with the commission on higher education" following "by the board" and substituted "shall provide" for "must provide" in Paragraph (3) of Subsection A; deleted "satisfactorily" preceding "passing" and "and a practical" preceding "examination" in Paragraph (4) of Subsection A; substituted the current provision of Subsection B for "Every massage therapy instructor must be currently licensed as a massage therapist"; designated the former second sentence of Subsection B as current Subsection C and deleted "documents a minimum of two years of experience in his area of instruction" at the end of the introductory paragraph and added Paragraphs (1) and (2) therein.

61-12C-10. Requirements for registration of massage therapy schools. (Repealed effective July 1, 2028.)

A. The board shall establish by rule procedures for the registration of massage therapy schools and shall register massage therapy schools that meet the requirements of the Massage Therapy Practice Act and rules adopted by the board pursuant to that act.

B. The board shall establish minimum standards of training and curriculum for massage therapy schools. Massage therapy schools shall provide an educational program that includes a minimum of six hundred fifty hours of training and shall include instruction in:

- (1) anatomy;
- (2) physiology;
- (3) massage therapy;

- (4) business;
- (5) hydrotherapy;
- (6) first aid;
- (7) cardiopulmonary resuscitation; and
- (8) professional ethics.

History: Laws 1991, ch. 147, § 10; 1993, ch. 173, § 9; 1999, ch. 240, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, substituted "Requirements for registration of massage therapy schools" for "Approved massage therapy schools registration" in the section heading; in Subsection A, substituted "procedures for the registration" for "procedures for approval", and added "and rules adopted by the board pursuant to that act"; in Subsection B, deleted "approved training programs and for approved" in the first sentence, deleted "At a minimum, approved" and substituted "Massage therapy schools shall provide an educational program that includes a minimum of six hundred fifty hours

of training and" for "At a minimum, approved massage therapy schools shall provide training programs that include a minimum of three hundred hours of training. This"; and deleted former Subsections C and D, relating to board establishment of a list of approved massage therapy schools and annual registration with the board.

The 1993 amendment, effective June 18, 1993, added current Subsection A; redesignated former Subsection A as Subsection B and inserted the paragraph designations in that subsection; rewrote the first and second sentences of former Subsection B as present Subsection C and designated the final sentence of former Subsection B as Subsection D; and deleted "and the commission on higher education" at the end of Subsection D.

61-12C-10.1. Massage therapy school registration, renewal, suspension and revocation. (Repealed effective July 1, 2028.)

A. A person shall not maintain, manage or operate a massage therapy school offering education, instruction or training in massage therapy unless the school is a registered massage therapy school.

B. Massage therapy school registrations shall expire annually. Expiration dates shall be established by rule of the board.

C. A registration shall be renewed by submitting a renewal application on a form provided by the board.

D. A sixty-day grace period shall be allowed each registrant after the end of the renewal period, during which time a registration may be renewed upon payment of the renewal fee and a late fee as prescribed by the board.

E. Proceedings to determine whether to suspend or revoke the registration of a massage therapy school may be instituted by sworn complaint of any individual, including members of the board, and shall conform with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

History: Laws 2019, ch. 40, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

Emergency clauses. — Laws 2019, ch. 40, § 15 contained an emergency clause and was approved February 4, 2019.

61-12C-11. Display of license or registration. (Repealed effective July 1, 2028.)

A massage therapy license or registration issued by the board shall at all times be posted in a conspicuous place in the holder's principal place of business.

History: Laws 1991, ch. 147, § 11; 1993, ch. 173, § 10; 1999, ch. 240, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, added "or registration" to the section heading.

The 1993 amendment, effective June 18, 1993, inserted "or registration" and "holder's" and deleted "of the licensee" at the end.

61-12C-12. Assignability of license. (Repealed effective July 1, 2028.)

A license or registration issued pursuant to the Massage Therapy Practice Act is not assignable or transferable.

History: Laws 1991, ch. 147, § 12; 1993, ch. 173, § 11.
Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 1993 amendment, effective June 18, 1993, inserted "or registration".

61-12C-13. Examinations. (Repealed effective July 1, 2028.)

A. The board shall establish by rule the required examinations for licensure as a massage therapist and the procedures for taking and retaking them. The board shall determine the passing grade on examinations.

B. The board shall specify by rule the general areas of competency to be covered by examinations for licensure and ensure that the examinations measure adequately both an applicant's competency and knowledge of related statutory requirements. Professional testing services may be utilized for the examinations.

History: Laws 1991, ch. 147, § 13; 1993, ch. 173, § 12; 1999, ch. 240, § 11; 2019, ch. 40, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, in Subsection A, after "required examinations", added "for licensure as a massage therapist".

The 1999 amendment, effective July 1, 1999, in Subsection A, deleted the former first and second sentences, substituted "the required examinations and the procedures for taking and retaking them" for "the examination application deadline and other rules relating to taking

and retaking licensure examinations"; and deleted Subsections C and D, relating to testing in the practical application of massage therapy techniques, anonymous grading, and retention of records of the exams.

The 1993 amendment, effective June 18, 1993, deleted "Written and practical" at the beginning of Subsection A; substituted "examinations" for "written exam" at the end of Subsection B; substituted "may be tested" for "shall be tested" in Subsection C; deleted former Subsection D, pertaining to compliance with state and federal equal opportunity guidelines; and designated former Subsection E as Subsection D.

61-12C-14. Temporary license. (Repealed effective July 1, 2028.)

A. Prior to examination, an applicant for licensure may obtain a temporary license to engage in the practice of massage therapy if the applicant meets all the requirements for licensure except completion of the examination.

B. The temporary license is valid until the results of the next scheduled examination are available and a license is issued or denied.

C. No more than one temporary license may be issued to an individual, and no temporary license shall be issued to an applicant who has previously failed the examinations.

History: Laws 1991, ch. 147, § 14; 1993, ch. 173, § 13; 1999, ch. 240, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, in Subsection B, deleted the last sentence which read "If approved, the applicant shall be issued the initial license for the remainder of the year".

The 1993 amendment, effective June 18, 1993, rewrote the section heading, which formerly read "Provisional

Licensure"; substituted "temporary license" for "provisional license" throughout the section; deleted former Subsection B, which read "Each recipient of a provisional license shall practice under the direct supervision of a licensed massage therapist"; redesignated former Subsections C and D as Subsections B and C; added "and a license is issued or denied" at the end of the first sentence and added the second sentence of Subsection B; and substituted "failed the examinations" for "failed either the written or the practical examination" at the end of Subsection C.

61-12C-15. Repealed.

Repeals. — Laws 1993, ch. 173, § 22 repealed 61-12C-15 NMSA 1978, as enacted by Laws 1991, ch. 147, § 15, concerning licensure without examination, effective

June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on NMSAOneSource.com.

61-12C-16. Expedited licensure by credentials. (Repealed effective July 1, 2028.)

A. The board shall license an out-of-state applicant in accordance with Section 61-1-31.1 NMSA 1978 if the applicant possesses a valid, unrestricted license or registration to practice

massage therapy in another licensing jurisdiction and pays required fees. As soon as practicable but no later than thirty days after a person files an application for an expedited license, the board shall process the application and issue the expedited license in accordance with Section 61-1-31.1 NMSA 1978.

B. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

C. The board shall determine each year the states and territories of the United States and the District of Columbia from which it will not accept applicants for expedited licensure and determine foreign countries from which it will accept applicants for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval.

History: Laws 1991, ch. 147, § 16; 1993, ch. 173, § 14; 1999, ch. 240, § 13; 2022, ch. 39, § 51.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure by credentials, provided that the massage therapy board shall issue an expedited license to an applicant who holds a valid, unrestricted license to practice massage therapy in another licensing jurisdiction and pays required fees, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "Expedited"; deleted "After successful completion of jurisprudence examination"; in Subsection A, after "The board", changed

"may" to "shall", after "license an", added "out-of-state", after "applicant", deleted "provided that he" and added "in accordance with Section 61-1-31.1 NMSA 1978 if the applicant", and after "possesses a valid", added "unrestricted", and deleted "issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation and has met educational and examination requirements equal to or exceeding those established pursuant to the Massage Therapy Practice Act", and added the remainder of the subsection; and added Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 1999 amendment, effective July 1, 1999, substituted "has met educational and examination requirements equal to" for "has met educational requirements substantially equivalent to".

The 1993 amendment, effective June 18, 1993, added "After successful completion of a jurisprudence examination" at the beginning of the section; deleted "without examination" following "applicant"; inserted "or registration"; and substituted "and has met educational requirements" for "that, in the judgment of the board, has requirements".

61-12C-17. License renewal; continuing education. (Repealed effective July 1, 2028.)

A. Except as provided for initial licensure in Subsection B of Section 61-12C-9 NMSA 1978, massage therapy licenses shall expire biennially. Expiration dates shall be established by rule.

B. The board may establish continuing education requirements as a condition of the renewal of massage therapy licenses.

C. All courses offered by continuing education providers shall be acceptable to meet continuing education requirements regardless of the location where the course is offered.

D. A continuing education provider who is an individual who was an active New Mexico registered independent massage therapy instructor on the effective date of this 2019 act shall submit to the board a syllabus and one-time fee for any course not previously approved by the board.

E. Within thirty days of application, the board may approve or deny the application of an individual who is not a continuing education provider to offer a particular continuing education course; provided that the individual submits:

- (1) a copy of any relevant license;
- (2) proof of a minimum of two years' experience in the area of instruction;
- (3) a course syllabus for the proposed course;
- (4) a resume; and

(5) a one-time fee to be determined by the board by rule.

F. A license shall be renewed by submitting a renewal application on a form provided by the board.

G. A sixty-day grace period shall be allowed each licensee after the end of the renewal period, during which time a license may be renewed upon payment of the renewal fee and a late fee as prescribed by the board.

History: Laws 1991, ch. 147, § 17; 1993, ch. 173, § 15; 1999, ch. 240, § 14; 2019, ch. 40, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors" and "massage therapy schools"; and expanded continuing education provisions; in the heading, deleted "or registration"; in Subsection A, added "Except as provided for initial licensure in Subsection B of Section 61-12C-9 NMSA 1978"; and added new Subsections C through E, and redesignated former Subsections C and D as Subsections F and G, respectively.

The 1999 amendment, effective July 1, 1999, in Subsection A, inserted "and massage therapy instructor registrations", and substituted "Expiration dates shall be established by rule" for "on a date established by rule";

deleted former Subsections B and D, relating to submitting renewal applications on forms provided by the board and renewal by massage therapy schools, redesignated former Subsection C as Subsection B; in Subsection B, substituted "renewal of massage therapy licenses" for "renewal of licenses"; added Subsection C, and redesignated former Subsection E as Subsection D.

The 1993 amendment, effective June 18, 1993, rewrote the section heading, which formerly read "License Renewal"; added current Subsection A and added Subsections C and D; redesignated former Subsections A and B as Subsections B and E; deleted "biennially" following "license" in the first sentence and substituted "rule" for "regulations" in the second sentence of Subsection B; and substituted "each license or registration holder" for "each licensee", "renewal period" for "licensing period", and "a license or registration" for "licenses" in Subsection E.

61-12C-18. Inactive status. (Repealed effective July 1, 2028.)

A. A massage therapy license not renewed at the end of the sixty-day grace period shall be placed on inactive status for a period not to exceed two years. At the end of two years, if the license has not been reactivated, it shall automatically expire.

B. If within a period of two years from the date the license was placed on inactive status the licensee wishes to resume practice, the licensee shall notify the board in writing, and, upon proof of completion of any continuing education or refresher courses prescribed by rule of the board and payment of an amount set by the board in lieu of all lapsed renewal fees, the license shall be restored in full.

History: Laws 1991, ch. 147, § 18; 1999, ch. 240, § 15; 2019, ch. 40, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors"; in Subsection A, after "massage therapy license", deleted "or massage therapy instructor registration"; and in Subsection B, after "inactive status the", deleted "massage

therapist or massage therapy instructor" and added "licensee".

The 1999 amendment, effective July 1, 1999, in Subsection A, added "A massage therapy license or massage therapy instructor registration" to the first sentence; in Subsection B, substituted "the license or registration was placed on inactive status the massage therapist or massage therapy instructor" for "the license was placed on inactive status the massage therapist".

61-12C-19. Repealed.

Repeals. — Laws 1993, ch. 173, § 22 repealed 61-12C-19 NMSA 1978, as enacted by Laws 1991, ch. 147, § 19, concerning massage therapy schools, effective June 18,

1993. For provisions of former section, see the 1992 NMSA 1978 on NMSAOneSource.com.

61-12C-20. License fees. (Repealed effective July 1, 2028.)

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish by rule a schedule of reasonable fees for applications, examinations, licenses, registrations, inspections, renewals, penalties, reactivation and necessary administrative fees, but no single fee shall exceed five hundred dollars (\$500). All fees collected shall be deposited in the massage therapy fund.

History: Laws 1991, ch. 147, § 20; 1993, ch. 173, § 16; 1999, ch. 240, § 16; 2020, ch. 6, § 32.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children,

and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

The 1999 amendment, effective July 1, 1999, deleted Subsections B through I, deleted the Subsection A designation, in the first sentence inserted "by rule", "examinations", "inspections", and "penalties, reactivation", deleted "placement on inactive service" following "renewals", and added "but no single fee shall exceed five hundred dollars (\$500)" at the end, and added the second sentence.

The 1993 amendment, effective June 18, 1993, substituted "registrations, renewals" for "renewal of licenses" in Subsection A; inserted "licensure" in Subsection B; deleted "first year" following "initial" in Subsection C; substituted "four hundred dollars (\$400)" for "two hundred dollars (\$200)" in Subsection D; deleted "annually" at the end of Subsection H; and added Subsection I.

61-12C-21. Advertising. (Repealed effective July 1, 2028.)

A massage therapist or massage therapy school shall include the number of the license or registration and the designation as a "licensed massage therapist" or "registered massage therapy school" in any advertisement of massage therapy services as established by board rule.

History: Laws 1991, ch. 147, § 21; 1993, ch. 173, § 17; 1999, ch. 240, § 17; 2019, ch. 40, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors".

The 1999 amendment, effective July 1, 1999, substituted "A massage therapist, massage therapist instructor or massage therapy school licensed or registered pursuant to the Massage Therapy Practice Act" for "Each massage

therapist, licensed under the provisions of the Massage Therapy Practice Act", "a 'massage therapist', 'registered massage therapy instructor' or 'registered massage therapy school'" for "a license or registration", and "massage therapy services as established by board rule" for "massage therapy services appearing in any newspaper, airwave transmission, telephone directory or other advertising medium".

The 1993 amendment, effective June 18, 1993, inserted "or registration, and the designation as either a license or registration," and inserted "therapy" preceding "services".

61-12C-22. Power of county or municipality to regulate massage. (Repealed effective July 1, 2028.)

A county or municipality, within its jurisdiction, may regulate persons licensed pursuant to the Massage Therapy Practice Act. Regulation shall not be inconsistent with the provisions of that act. This section shall not be construed to prohibit a county or municipality from enacting any regulation of persons not licensed pursuant to that act.

History: Laws 1991, ch. 147, § 22.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

61-12C-23. Fund created. (Repealed effective July 1, 2028.)

There is created in the state treasury the "massage therapy fund". Money in the fund is appropriated to the board for the purpose of carrying out the provisions of the Massage Therapy Practice Act. All funds received or collected by the board or the department under the Massage Therapy Practice Act shall be deposited with the state treasurer, who shall place the money to the credit of the massage therapy fund. No balance in the fund at the end of any fiscal year shall revert to the general fund.

History: Laws 1991, ch. 147, § 23.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

61-12C-24. Suspension, revocation and reinstatement of licenses. (Repealed effective July 1, 2028.)

A. Pursuant to the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may take disciplinary action against an individual licensed pursuant to the Massage Therapy Practice Act.

B. The board has authority to take an action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that the licensee:

- (1) is guilty of fraud, deceit or misrepresentation;

- (2) attempted to use as the licensee's own the license of another;
- (3) allowed the use of the licensee's license by another;
- (4) has been adjudicated as mentally incompetent by regularly constituted authorities;
- (5) has been convicted of a crime that substantially relates to the qualifications, functions or duties of a massage therapist. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of conviction;
- (6) is guilty of unprofessional or unethical conduct or a violation of the code of ethics;
- (7) is habitually or excessively using controlled substances or alcohol;
- (8) is guilty of false, deceptive or misleading advertising;
- (9) is guilty of aiding, assisting or advertising an unlicensed individual in the practice of massage therapy;
- (10) is grossly negligent or incompetent in the practice of massage therapy;
- (11) has had a license to practice massage therapy revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee similar to acts described in this section. A certified copy of the record of conviction shall be conclusive evidence of the conviction; or
- (12) is guilty of failing to comply with a provision of the Massage Therapy Practice Act or rules of the board adopted pursuant to that act and filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

C. Disciplinary proceedings may be instituted by sworn complaint of any individual, including members of the board, and shall conform with the provisions of the Uniform Licensing Act.

D. The board shall establish the guidelines for the disposition of disciplinary cases. Guidelines may include minimum and maximum fines, periods of probation, conditions of probation or reissuance of a license.

E. Licensees who have been found culpable and sanctioned by the board shall be responsible for the payments of all costs of the disciplinary proceedings.

History: Laws 1991, ch. 147, § 24; 1993, ch. 173, § 18; 1999, ch. 240, § 18; 2019, ch. 40, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, changed the criminal standard for the massage therapy board to impose disciplinary action on a massage therapy licensee, required the board to establish guidelines for the disposition of disciplinary cases; in the heading, deleted "denial"; in Paragraph B(5), after "convicted of", deleted "any offense punishable by incarceration in a state penitentiary or federal prison" and added "a crime that substantially relates to the qualifications, functions or duties of a massage therapist"; and in Subsection D, after "The board", deleted "may" and added "shall".

The 1999 amendment, effective July 1, 1999, rewrote Subsection A; added the present Subsection B designation and redesignated former Subsections B through D as Subsections C through E; substituted "The board has authority to take an action set forth in Section 61-1-3 NMSA 1978" for "set forth in the Uniform Licensing Act"; in Subsection B(1), deleted "in procuring or attempting to procure a license or registration provided for in the Massage Therapy Practice Act" following "deceit or misrepresentation"; in Subsection B(5), substituted "has been convicted of any offense punishable by incarceration in a state

penitentiary or federal prison" for "has been convicted or found guilty, regardless of adjudication, of a crime, in any jurisdiction, that directly relates to the practice of massage therapy or to the ability to practice massage therapy. Any plea of nolo contendere shall be considered a conviction for the purposes of this section", and added the last sentence; and added Subsection B(12).

The 1993 amendment, effective June 18, 1993, in Subsection A, inserted "impose a fine not to exceed one thousand dollars (\$1,000), place on probation as specified by the board or" near the beginning, "temporary license or registration" near the middle and "registrant" near the end of the introductory paragraph, substituted "a license" for "any license" in Paragraph (1), inserted "or registration" following "license" in Paragraphs (1) to (3) and (11), added "or a violation of the code of ethics" at the end of Paragraph (6), inserted "or unregistered" in Paragraph (9), inserted "or registrant" near the middle and substituted the language beginning "conviction shall" for "the jurisdiction making such revocation, suspension or denial shall be conclusive evidence thereof" at the end of Paragraph (11); rewrote Subsection C, which made violation of the Massage Therapy Practice Act a petty misdemeanor and provided a fine not exceeding \$500 or imprisonment up to six months in jail or both; and added Subsection D.

61-12C-24.1. Denial of license. (Repealed effective July 1, 2028.)

A. Pursuant to the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny the issuance of a massage therapist license to an applicant.

B. The board has authority to take an action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that the applicant:

- (1) is guilty of fraud, deceit or misrepresentation;
- (2) attempted to use as the applicant's own the license of another;
- (3) allowed the use by another of the applicant's license issued in another jurisdiction;
- (4) has been adjudicated as mentally incompetent by regularly constituted authorities;
- (5) has been convicted of a crime that substantially relates to the qualifications, functions or duties of a massage therapist. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of conviction;
- (6) is guilty of unprofessional or unethical conduct or a violation of the code of ethics;
- (7) is habitually or excessively using controlled substances or alcohol;
- (8) is guilty of false, deceptive or misleading advertising;
- (9) is guilty of aiding, assisting or advertising the practice of massage therapy in New Mexico without a New Mexico license;
- (10) is grossly negligent or incompetent in the practice of massage therapy;
- (11) has had a license to practice massage therapy revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the applicant similar to acts described in this section. A certified copy of the record of conviction shall be conclusive evidence of the conviction; or
- (12) is guilty of failing to comply with a provision of the Massage Therapy Practice Act or rules of the board adopted pursuant to that act and filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 2019, ch. 40, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

Emergency clauses. — Laws 2019, ch. 40, § 15 contained an emergency clause and was approved February 4, 2019.

61-12C-25. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Massage Therapy Practice Act.

History: Laws 1991, ch. 147, § 25.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

61-12C-26. Protected actions. (Repealed effective July 1, 2028.)

A. No member of the board shall bear liability or be subject to civil damages or criminal prosecution for any action undertaken or performed within the scope of his duty.

B. No person or legal entity providing truthful and accurate information to the board, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

History: Laws 1993, ch. 173, § 19.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

61-12C-27. Offenses; criminal penalties. (Repealed effective July 1, 2028.)

An individual who does any of the following is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978:

- A. violates a provision of the Massage Therapy Practice Act or rules adopted pursuant to that act;
- B. renders or attempts to render massage therapy services without the required current valid license issued by the board; or
- C. advertises or uses a designation, diploma or certificate implying that the individual is a massage therapist or massage therapy school unless the individual holds a current valid license or registration issued by the board.

History: Laws 1993, ch. 173, § 20; 1999, ch. 240, § 19; 2019, ch. 40, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors" and "massage therapy school"; in Subsection B, after "massage therapy services", deleted "instruction as a massage therapy instructor or instruction as a massage therapy

school"; and in Subsection C, after "massage therapist", deleted "massage therapy instructor".

The 1999 amendment, effective July 1, 1999, inserted "Offenses; criminal" in the section heading, and rewrote the section, which formerly read: "Any person who violates any provision of the Massage Therapy Practice Act is guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000) or imprisonment for a period not to exceed one year or both".

61-12C-28. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The massage therapy board is terminated on July 1, 2027 pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Massage Therapy Practice Act until July 1, 2028. Effective July 1, 2028, Chapter 61, Article 12C NMSA 1978 is repealed.

History: Laws 1993, ch. 173, § 21; 2000, ch. 4, § 9; 2005, ch. 208, § 8; 2015, ch. 119, § 13; 2021, ch. 50, § 9.

The 2021 amendment, effective June 18, 2021, extended the sunset date for the massage therapy board, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the massage therapy board to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 2000 amendment, effective February 15, 2000, substituted "massage therapy board" for "board of massage therapy" and substituted "2005" for "1999" in the first sentence; substituted "the Massage Therapy Practice Act" for "Chapter 61, Article 12C NMSA 1978" and substituted "2006" for "2000" in the second sentence; and substituted "2006, Chapter 61, Article 12C" for "2000, Article 12C of" in the last sentence.

ARTICLE 12D

Physical Therapy

Sec. 61-12D-1 through 61-12D-19 NMSA 1978

- 61-12D-1. Short title. (Repealed effective July 1, 2028.)
- 61-12D-2. Legislative purpose. (Repealed effective July 1, 2028.)
- 61-12D-3. Definitions. (Repealed effective July 1, 2028.)
- 61-12D-4. Board created. (Repealed effective July 1, 2028.)
- 61-12D-5. Powers and duties. (Repealed effective July 1, 2028.)
- 61-12D-6. Board fund; created. (Repealed effective July 1, 2028.)
- 61-12D-7. Fees. (Repealed effective July 1, 2028.)
- 61-12D-8. Practice of physical therapy; license required. (Repealed effective July 1, 2028.)
- 61-12D-9. Use of titles; restrictions. (Repealed effective July 1, 2028.)
- 61-12D-10. Licensure; qualifications; licensure from foreign schools; temporary licenses; reinstatement. (Repealed effective July 1, 2028.)
- 61-12D-10.1. Expedited physical therapist and physical therapist assistant licensure. (Repealed effective July 1, 2028.)

Sec. 61-12D-11 through 61-12D-19 NMSA 1978

- 61-12D-11. Exemptions. (Repealed effective July 1, 2028.)
- 61-12D-12. Supervision. (Repealed effective July 1, 2028.)
- 61-12D-13. Grounds for disciplinary action. (Repealed effective July 1, 2028.)
- 61-12D-14. Consumer protection. (Repealed effective July 1, 2028.)
- 61-12D-15. Disciplinary actions; penalties. (Repealed effective July 1, 2028.)
- 61-12D-16. Unlawful practice; criminal and civil penalties; injunctive relief. (Repealed effective July 1, 2028.)
- 61-12D-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)
- 61-12D-18. Temporary provision; existing regulations; licensure under prior law. (Repealed effective July 1, 2028.)
- 61-12D-19. Temporary provision; board members to continue. (Repealed effective July 1, 2028.)

61-12D-1. Short title. (Repealed effective July 1, 2028.)

This act [61-12D-1 through 61-12D-19 NMSA 1978] may be cited as the "Physical Therapy Act".

History: Laws 1997, ch. 89, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 31, 50.

Licensing and regulation of practice of physical therapy,
8 A.L.R.5th 825.

70 C.J.S. Physicians, Surgeons, and Other Health-Care
Providers §§ 7, 12.

61-12D-2. Legislative purpose. (Repealed effective July 1, 2028.)

The purpose of the Physical Therapy Act is to protect the public health, safety and welfare and provide for control, supervision, licensure and regulation of the practice of physical therapy. To carry out those purposes, only individuals who meet and maintain minimum standards of competence and conduct may engage in the practice of physical therapy. The practice of physical therapy is declared to affect the public interest and that act shall be liberally construed so as to accomplish the purpose stated in that act.

History: Laws 1997, ch. 89, § 2.

Delayed repeals. — For delayed repeal of this section,
see 61-12D-17 NMSA 1978.

61-12D-3. Definitions. (Repealed effective July 1, 2028.)

As used in the Physical Therapy Act:

- A. "assistive personnel" means physical therapist assistants, physical therapy aides and other assistive personnel;
- B. "board" means the physical therapy board;
- C. "other assistive personnel" means trained or educated personnel other than physical therapist assistants or physical therapy aides who perform specific designated tasks related to physical therapy under the supervision of a physical therapist. At the discretion of the supervising physical therapist and if not prohibited by any other law, it may be appropriate for other assistive personnel to be identified by the title specific to their training or education;
- D. "person" means an individual or other legal entity, excluding a governmental entity;
- E. "physical therapist" means a person who is licensed in this state to practice physical therapy;
- F. "physical therapist assistant" means a person who performs physical therapy procedures and related tasks pursuant to a plan of care written by the supervising physical therapist;
- G. "physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist;
- H. "physical therapy aide" means a person trained under the direction of a physical therapist who performs designated and supervised routine physical therapy tasks;
- I. "practice of physical therapy" means:
 - (1) examining and evaluating patients with mechanical, physiological and developmental impairments, functional limitations and disabilities or other health-related conditions in order to determine a physical therapy diagnosis, prognosis and planned therapeutic intervention;
 - (2) alleviating impairments and functional limitations by designing, implementing and modifying therapeutic interventions that include therapeutic exercise; functional training in self-care and community or work reintegration; manual therapy techniques, including soft tissue and joint mobilization and manipulation; therapeutic massage; assistive and adaptive devices and equipment; bronchopulmonary hygiene; debridement and wound care; physical agents; mechanical and electrotherapeutic modalities; and patient-related instruction;
 - (3) preventing injury, impairments, functional limitations and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations; and
 - (4) engaging in consultation, testing, education and research; and
- J. "restricted license" means a license to which restrictions or conditions as to scope of practice, place of practice, supervision of practice, duration of licensed status or type or condition of patient or client served are imposed by the board.

History: Laws 1997, ch. 89, § 3.

Delayed repeals. — For delayed repeal of this section,
see 61-12D-17 NMSA 1978.

61-12D-4. Board created. (Repealed effective July 1, 2028.)

A. The "physical therapy board" is created. The board shall be administratively attached to the regulation and licensing department. The board shall consist of five members appointed by the governor. Three members shall be physical therapists who are residents of the state, who possess unrestricted licenses to practice physical therapy and who have been practicing in New Mexico for no less than five years. Two members shall be citizens appointed from the public at large who are not associated with, or financially interested in, any health care profession.

B. Appointments shall be made for staggered terms of three years with no more than two terms ending at any one time. A member shall not serve for more than two successive three-year terms. Vacancies shall be filled for the unexpired term by appointment by the governor prior to the next scheduled board meeting. Board members shall continue to serve until a successor has been appointed and qualified.

C. The members shall elect a chairman and may elect other officers as they deem necessary.

D. The governor may remove a member of the board for misconduct, incompetence or neglect of duty.

E. Members may receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

F. There shall be no liability on the part of and no action for damages against any board member when the member is acting within the scope of his duties.

History: Laws 1997, ch. 89, § 4; 2003, ch. 408, § 17.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

Cross references. — For transfer from physical therapists' licensing board, see 61-12D-19 NMSA 1978.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A.

61-12D-5. Powers and duties. (Repealed effective July 1, 2028.)

The board:

A. shall examine all applicants for licensure to practice physical therapy and issue licenses or permits to those who are duly qualified;

B. shall regulate the practice of physical therapy by interpreting and enforcing the provisions of the Physical Therapy Act;

C. may promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the provisions of the Physical Therapy Act;

D. may meet as often as it deems necessary. A majority of the members constitutes a quorum for the transaction of business. The board shall keep an official record of all its proceedings;

E. may establish requirements for assessing continuing competency;

F. may collect fees;

G. may elect such officers as it deems necessary for the operations and obligations of the board. Terms of office shall be one year;

H. shall provide for the timely orientation and training of new professional and public appointees to the board, including training in licensing and disciplinary procedures and orientation to all statutes, rules, policies and procedures of the board;

I. may establish ad hoc committees and pay per diem and mileage to the members;

J. may enter into contracts;

K. may deny, suspend or revoke a license or take other disciplinary action in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

L. shall report final disciplinary action taken against a physical therapist or physical therapist assistant to the national disciplinary database;

M. shall publish at least annually final disciplinary action taken against any physical therapist or physical therapist assistant; and

N. may prescribe the forms of license certificates, application forms and such other documents as it deems necessary to carry out the provisions of the Physical Therapy Act.

History: Laws 1997, ch. 89, § 5; 2003, ch. 408, § 18; 2022, ch. 39, § 52.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

Cross references. — For effect of rules by prior board, see 61-12D-18 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the physical therapy board is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; in Subsection B, after "Physical Therapy Act", deleted "including taking

disciplinary action"; in Subsection C, after "may", deleted "adopt, file, amend or repeal" and added "promulgate", after "rules", deleted "and regulations", and after "in accordance with the", deleted "Uniform Licensing" and added "State Rules"; and added a new Subsection K and redesignated former Subsections K through M as Subsections L through N, respectively.

The 2003 amendment, effective July 1, 2003, deleted former Subsections I and J, concerning employment of director and personnel and hire of an attorney, and redesignated the subsequent subsections accordingly.

61-12D-6. Board fund; created. (Repealed effective July 1, 2028.)

The "physical therapy fund" is created in the state treasury. The fund shall consist of deposits into the fund and income from investment of the fund. Money in the fund at the end of any fiscal year shall not revert to the general fund. Money in the fund is appropriated to the board to pay its necessary expenses pursuant to appropriation by the legislature and a budget approved by the state board of finance. Disbursements from the fund shall be made only on warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his authorized representative.

History: Laws 1997, ch. 89, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

61-12D-7. Fees. (Repealed effective July 1, 2028.)

A. Except as provided in Section 61-1-34 NMSA 1978, the board, by regulation, may charge the following fees:

(1) application for licensure as a physical therapist, not to exceed three hundred dollars (\$300); provided that an additional fee to cover the cost of any examinations provided by the board may be charged;

(2) application for licensure as a physical therapist assistant, not to exceed three hundred dollars (\$300); provided that an additional fee to cover the cost of any examinations provided by the board may be charged;

(3) annual renewal of license as a physical therapist, not to exceed one hundred fifty dollars (\$150);

(4) annual renewal of license as a physical therapist assistant, not to exceed one hundred dollars (\$100); and

(5) late fee, not to exceed five hundred dollars (\$500).

B. The board may charge reasonable administration and duplication fees.

History: Laws 1997, ch. 89, § 7; 2020, ch. 6, § 33.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military

service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

61-12D-8. Practice of physical therapy; license required. (Repealed effective July 1, 2028.)

A. No person shall practice or hold himself out to be engaging in the practice of physical therapy or designate himself as a physical therapist unless he is licensed as a physical therapist or is exempt from licensure as provided in the Physical Therapy Act.

B. No person shall designate himself or act as a physical therapist assistant unless he is licensed as a physical therapist assistant or is exempt from licensure as provided in the Physical Therapy Act.

C. A physical therapist shall refer persons under his care to the appropriate health care practitioner if the physical therapist has reasonable cause to believe symptoms or conditions are present that require services beyond his scope of practice or when physical therapy is contraindicated.

D. Physical therapists or physical therapist assistants shall adhere to the recognized standards of ethics of the physical therapy profession.

History: Laws 1997, ch. 89, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military

service members; their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

61-12D-9. Use of titles; restrictions. (Repealed effective July 1, 2028.)

A. A physical therapist shall use the letters "PT" in connection with his name or place of business to denote licensure pursuant to the Physical Therapy Act.

B. It is unlawful for a person or his employees, agents or representatives to use in connection with his name or the name or activity of the business the words "physical therapy", "physical therapist", "physiotherapy", "physiotherapist", "registered physical therapist", the letters "PT", "LPT", "RPT", "MPT", "DPT" or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, including the billing of services labeled as physical therapy, unless the services are provided by or under the direction of a physical therapist.

C. A physical therapist assistant shall use the letters "PTA" in connection with his name to denote licensure.

D. No person shall use the title "physical therapist assistant" or use the letters "PTA" in connection with his name or any other words, abbreviations or insignia indicating or implying directly or indirectly that he is a physical therapist assistant unless he has graduated from an accredited physical therapist assistant education program approved by the board and has met the requirements of the Physical Therapy Act.

History: Laws 1997, ch. 89, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

61-12D-10. Licensure; qualifications; licensure from foreign schools; temporary licenses; reinstatement. (Repealed effective July 1, 2028.)

A. An applicant for licensure as a physical therapist shall submit a completed application and have the following minimum qualifications:

- (1) be a graduate of an accredited physical therapy program approved by the board;
- (2) have successfully passed the national physical therapy examination approved by the board; and
- (3) have successfully passed the state jurisprudence examination.

B. An applicant for licensure as a physical therapist who has been educated outside the United States shall submit a completed application and meet the following minimum qualifications in addition to those required in Subsection A of this section:

- (1) provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in accredited educational programs in the United States, as determined by the board. If the board determines that a foreign-educated applicant's education is not substantially equivalent, it may require completion of additional course work before proceeding with the application process;
- (2) provide evidence that the applicant is a graduate of a school of training that is recognized by the foreign country's own ministry of education or similar institution;
- (3) provide written proof of authorization to practice as a physical therapist without limitations in the legal jurisdiction where the post-secondary institution from which the applicant has graduated is located;

(4) have the applicant's educational credentials evaluated by a board-approved credential evaluation agency; and

(5) participate in an interim supervised clinical practice period as may be prescribed by the board.

C. The board may issue an interim permit to a foreign-trained applicant who satisfies the board's requirements. An interim permit shall be issued for the purpose of participating in a supervised clinical practice period.

D. If the foreign-educated physical therapist applicant is a graduate of a college accredited by the commission on accreditation in physical therapy education, the board shall waive requirements of Paragraphs (1), (2), (4) and (5) of Subsection B of this section.

E. An applicant for licensure as a physical therapist assistant shall submit a completed application and meet the following minimum requirements:

(1) be a graduate of an accredited physical therapist assistant program approved by the board; and

(2) have successfully passed the national physical therapy examination approved by the board.

F. An applicant for licensure as a physical therapist or physical therapist assistant shall file a written application on forms provided by the board. A nonrefundable application fee and the cost of the examination shall accompany the completed written application.

G. Applicants who fail to pass the examinations shall be subject to requirements determined by board regulations prior to being approved by the board for subsequent testing.

H. The board or its designee shall issue an expedited license to a physical therapist or physical therapist assistant who has a valid unrestricted license from another United States licensing jurisdiction.

I. Prior to licensure, if prescribed by the board, the board or its designee may issue a temporary nonrenewable license to a physical therapist or physical therapist assistant who has completed the education and experience requirements of the Physical Therapy Act. The temporary license shall allow the applicant to practice physical therapy under the supervision of a licensed physical therapist until a permanent license is approved that shall include passing the national physical therapy examination.

J. The board or its designee may issue a temporary license to a physical therapist or physical therapist assistant performing physical therapy while teaching an educational seminar who has met the requirements established by regulation of the board.

K. A physical therapist or physical therapist assistant licensed under the provisions of the Physical Therapy Act shall renew the physical therapist's or physical therapist assistant's license as specified in board rules. A person who fails to renew the person's license by the date of expiration shall not practice physical therapy as a physical therapist or physical therapist assistant in New Mexico.

L. Reinstatement of a lapsed license following a renewal deadline requires payment of a renewal fee and late fee.

M. Reinstatement of a physical therapist or physical therapist assistant license that has lapsed for more than three years, without evidence of continued practice in another state pursuant to a valid unrestricted license in that state, requires reapplication and payment of fees, as specified in board rules. The board shall promulgate rules establishing the qualifications for reinstatement of a lapsed license.

N. The board may establish, by rule, activities to periodically assess continuing competence to practice physical therapy.

O. A physical therapist shall refer a patient to the patient's licensed health care provider if:

(1) after thirty days of initiating physical therapy intervention, the patient has not made measurable or functional improvement with respect to the primary complaints of the patient; provided that the thirty-day limit shall not apply to:

(a) treatment provided for a condition related to a chronic, neuromuscular or developmental condition for a patient previously diagnosed by a licensed health care provider as having a chronic, neuromuscular or developmental condition;

(b) services provided for health promotion, wellness, fitness or maintenance purposes; or

(c) services provided to a patient who is participating in a program pursuant to an individual education plan or individual family service plan under federal law; or

(2) at any time, the physical therapist has reason to believe the patient has symptoms or conditions requiring treatment that is beyond the scope of practice of the physical therapist.

P. As used in this section, "licensed health care provider" means:

(1) a medical doctor or an osteopathic physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(2) a chiropractic physician licensed pursuant to the Chiropractic Physician Practice Act [Chapter 61, Article 4 NMSA 1978];

(3) a podiatrist licensed pursuant to the Podiatry Act [Chapter 61, Article 8 NMSA 1978];

(4) a dentist licensed pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978];

(5) a doctor of oriental medicine licensed pursuant to the Acupuncture and Oriental Medicine Practice Act [Chapter 61, Article 14A NMSA 1978];

(6) a certified nurse practitioner licensed pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(7) a certified nurse-midwife licensed pursuant to the Nursing Practice Act and registered with the public health division of the department of health as a certified nurse-midwife;

(8) a certified nurse specialist licensed pursuant to the Nursing Practice Act; or

(9) a physician assistant licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978].

History: Laws 1997, ch. 89, § 10; 2015, ch. 144, § 1; 2021, ch. 70, § 9; 2022, ch. 39, § 53.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2022 amendment, effective May 18, 2022, revised qualifications for licensure as a physical therapist and physical therapist assistant, provided for an expedited license for physical therapists or physical therapist assistants who have a valid unrestricted license from another United States licensing jurisdiction, and revised the definition of "licensed health care provider", as used in this section; in the section heading, added "licensure from foreign schools; temporary licenses; reinstatement"; in Subsection A, deleted former Paragraph A(1), which provided "be of good moral character", and redesignated former Paragraphs A(2) through A(4) as Paragraphs A(1) through A(3), respectively; in Subsection B, after "those required in", deleted "Paragraphs (1), (3) and (4) of", and deleted former Paragraph B(5), which related to English proficiency, and redesignated former Paragraph B(6) as Paragraph B(5); in Subsection E, deleted former Paragraph E(1), which provided "be of good moral character", and redesignated former Paragraphs E(2) and E(3) as Paragraphs E(1) and E(2), respectively, and deleted former Paragraph E(4); in Subsection H, after "shall issue", deleted "a" and added "an expedited", after "United States", added "licensing", and after "jurisdiction", deleted "and who meets all requirements for licensure in New Mexico"; and in Subsection P, Paragraph P(1), after "a", deleted "physician" and added "medical doctor or an osteopathic physician", deleted former Paragraph P(2) and redesignated former Paragraphs P(3) through P(10) as Paragraphs P(2) through P(9), respectively.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or

different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2021 amendment, effective June 18, 2021, removed proof of legal authorization to reside and seek employment in the United States or its territories as a requirement for licensure as a physical therapist, and made technical amendments; in Subsection B, deleted Paragraph B(4) and redesignated former Paragraphs B(5) through B(7) as Paragraphs B(4) through B(6), respectively, in Subsection D, after "Paragraphs (1), (2)", changed "(5)" to "(4)", and after the next occurrence of "and", changed "(7)" to "(6)"; and in Subsection P, Paragraph P(2), after "pursuant to", deleted "Chapter 61, Article 10 NMSA 1978" and added "the Osteopathic Medicine Act".

The 2015 amendment, effective June 19, 2015, removed the requirement of a prior primary care medical diagnosis prior to physical therapy treatment, required a physical therapist to refer a patient to the patient's licensed health care provider upon certain conditions, and defined "licensed health care provider"; in Paragraph (1) of Subsection B, after "evidence that", deleted "his" and added "the applicant's"; in Paragraph (2) of Subsection B, after "provide evidence that", deleted "he" and added "the applicant"; in Paragraph (5) of Subsection B, after "have", deleted "his" and added "the applicant's"; in Paragraph (6) of Subsection B, after "English is not", deleted "his" and added "the applicant's"; in Subsection I, after "the Physical", deleted "Therapist" and added "Therapy"; in Subsection K, after "Act shall renew", deleted "his" and added "the physical therapist's or physical therapist assistant's", and after "fails to renew", deleted "his" and added "the person's"; and deleted former Subsection O and added new Subsections O and P.

ANNOTATIONS

Continuing education. — Absent authorization by the legislature, physical therapist licensing board could not require continuing education as a prerequisite for licensure renewal. 1975 Op. Att'y Gen. No. 75-40.

61-12D-10.1. Expedited physical therapist and physical therapist assistant licensure. (Repealed effective July 1, 2028.)

A. The board shall issue an expedited license to a person licensed as a physical therapist or physical therapist assistant in another state or the District of Columbia who pays the required

fees and demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction. The board shall, as soon as practicable but no later than thirty days, process the application and issue the expedited license in accordance Section 61-1-31.1 NMSA 1978.

B. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination.

C. The board shall determine licensing jurisdictions from which it will not accept applicants for expedited licensure. The board shall post the list of disapproved licensing jurisdictions on its website, including the specific reasons for disapproval.

History: Laws 2022, ch. 39, § 54.

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

61-12D-11. Exemptions. (Repealed effective July 1, 2028.)

A. The following persons are exempt from licensure as physical therapists under the Physical Therapy Act:

(1) a person who is pursuing a course of study leading to a degree as a physical therapist in an entry-level education program approved by the board and is satisfying supervised clinical education requirements related to his physical therapy education; and

(2) a physical therapist practicing in the United States armed services, United States public health service or veterans administration as based on requirements under federal regulations for state licensure of health care providers.

B. Nothing in the Physical Therapy Act shall be construed as restricting persons licensed under any other law of this state from engaging in the profession or practice for which they are licensed.

History: Laws 1997, ch. 89, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

61-12D-12. Supervision. (Repealed effective July 1, 2028.)

A. A physical therapist is responsible for patient care given by assistive personnel under his supervision. A physical therapist may delegate to assistive personnel and supervise selected acts, tasks or procedures that fall within the scope of physical therapy practice but do not exceed the assistive personnel's education or training.

B. A physical therapist assistant shall function under the supervision of a physical therapist as prescribed by rules of the board.

C. Physical therapy aides and other assistive personnel shall perform patient care activities under on-site supervision of a physical therapist. "On-site supervision" means the supervising physical therapist shall:

(1) be continuously on-site and present in the department or facility where the assistive personnel are performing services;

(2) be immediately available to assist the person being supervised in the services being performed; and

(3) maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

History: Laws 1997, ch. 89, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

ANNOTATIONS

"Supervision." — Term "immediate personal supervision," as used in this section, calls for close, direct supervision by a licensed practitioner of the healing arts. 1957-58 Op. Att'y Gen. No. 57-316 (rendered under prior law).

Holding self out as physical therapist. — Even without an appropriate title or set of initials, an individual could still be publicly professing to be a physical therapist. 1957-58 Op. Att'y Gen. No. 57-316.

Masseur. — Masseur who merely massaged other persons without professing to do so to relieve disease or pain did not come within the provisions of former licensing act, but when he held himself as being able to heal or cure diseases, he was subject to prosecution. 1941-42 Op. Att'y Gen. No. 41-3956; 1949-50 Op. Att'y Gen. No. 50-5275.

Violation of act. — While unlicensed individual might not be guilty of unprofessional conduct since he works for physicians on a prescription basis, his want of a license plus lack of knowledge of his activities by the orthopedic

surgeon under whose control he ostensibly works, and lack of close, direct and personal supervision of such activities by any licensed practitioner, clearly indicates a lack of compliance with this act. 1957-58 Op. Att'y Gen. No. 57-316.

61-12D-13. Grounds for disciplinary action. (Repealed effective July 1, 2028.)

The following conduct, acts or conditions constitute grounds for disciplinary action:

- A. practicing physical therapy in violation of the provisions of the Physical Therapy Act or rules adopted by the board;
- B. practicing or offering to practice beyond the scope of physical therapy practice as defined in the Physical Therapy Act;
- C. obtaining or attempting to obtain a license by fraud or misrepresentation;
- D. engaging in or permitting the performance of negligent care by a physical therapist or by assistive personnel working under the physical therapist's supervision, regardless of whether actual injury to the patient is established;
- E. engaging in the performance of negligent care by a physical therapist assistant, regardless of whether actual injury to the patient is established. This includes exceeding the authority to perform tasks pursuant to the plan of care written by the supervising physical therapist;
- F. having been convicted of a felony in the courts of this state or any other state, territory or country, subject to the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978]. Conviction includes a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;
- G. practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the habitual or excessive use of controlled substances, other habit-forming drugs, chemicals or alcohol;
- H. having had a license revoked or suspended; other disciplinary action taken; or an application for licensure refused, revoked or suspended by the proper authorities of another state, territory or country based upon acts by the licensee similar to acts described in this section. A certified copy of the record of suspension, revocation or other disciplinary action taken by the state taking the disciplinary action is conclusive evidence;
- I. failing to adequately supervise assistive personnel;
- J. engaging in sexual misconduct, including engaging in or soliciting sexual relationships with a patient, whether consensual or nonconsensual, while a physical therapist- or physical therapist assistant-patient relationship exists; or sexual harassment of a patient that includes making sexual advances, requesting sexual favors and engaging in other verbal conduct or physical contact of a sexual nature while a physical therapist- or physical therapist assistant-patient relationship exists;
- K. directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee; or profiting by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. Nothing in this subsection prohibits the members of any regularly and properly organized business entity recognized by law and comprised of physical therapists from dividing fees received for professional services among themselves as they determine by contract necessary to defray their joint operating expense;
- L. failing to adhere to the recognized standards of ethics of the physical therapy profession;
- M. charging unreasonable or fraudulent fees for services performed or not performed;
- N. making misleading, deceptive, untrue or fraudulent representations in the practice of physical therapy;
- O. having been adjudged mentally incompetent by a court of competent jurisdiction;
- P. aiding or abetting an unlicensed person to perform activities requiring a license;
- Q. failing to report to the board any act or omission of a licensee, applicant or other person that violates the provisions of the Physical Therapy Act;
- R. interfering with or refusing to cooperate in an investigation or disciplinary proceeding of the board, including misrepresentation of facts or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding;

S. failing to maintain patient confidentiality without prior written consent or unless otherwise provided by law;

T. impersonating another person licensed to practice physical therapy, permitting or allowing any person to use the physical therapist's or physical therapist assistant's license or practicing physical therapy under a false or assumed name;

U. failure to report to the board the surrendering of a license or other authorization to practice physical therapy in another state or jurisdiction or the surrendering of membership in any professional association following, in lieu of or while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section; and

V. abandonment of patients.

History: Laws 1997, ch. 89, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

61-12D-14. Consumer protection. (Repealed effective July 1, 2028.)

A. Any person, including a licensee; corporation; insurance company; health care organization; health care facility; and state, federal or local governmental agency, shall report to the board any conviction, determination or finding that a licensee has committed an act that constitutes a violation of the Physical Therapy Act. The person is immune from civil liability for providing information in good faith to the board. Failure by a licensee to report a violation of the Physical Therapy Act shall constitute grounds for disciplinary action.

B. The board may permit an impaired physical therapist or assistive personnel to actively participate in a board-approved substance abuse treatment program under the following conditions:

(1) the board has evidence indicating that the licensee is an impaired professional;

(2) the licensee has not been convicted of a felony relating to a controlled substance in a court of law of the United States or any other territory or country;

(3) the impaired professional enters into a written agreement with the board and complies with all the terms of the agreement, including making satisfactory progress in the program and adhering to any limitations on his practice imposed by the board to protect the public. Failure to enter into such an agreement shall disqualify the professional from the voluntary substance abuse program; and

(4) as part of the agreement established between the licensee and the board, the licensee shall sign a waiver allowing the substance abuse program to release information to the board if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety.

C. The public shall have access to information pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

D. The board shall conduct its meetings and disciplinary hearings in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

E. Physical therapists and physical therapist assistants shall disclose in writing to patients if the referring health care practitioner is deriving direct or indirect compensation from the referral to physical therapy.

F. Physical therapists and physical therapist assistants shall disclose any financial interest in products they endorse and recommend to their patients.

G. The licensee has the responsibility to ensure that the patient has knowledge of freedom of choice in services and products.

H. The physical therapist or physical therapist assistant shall not promote an unnecessary device, treatment intervention or service for the financial gain of himself or another person.

I. The physical therapist or physical therapist assistant shall not provide treatment intervention unwarranted by the condition of the patient, nor shall he continue treatment beyond the point of reasonable benefit.

J. A person may submit a complaint regarding a physical therapist, physical therapist assistant or other person potentially in violation of the Physical Therapy Act. The board shall keep

all information relating to the receiving and investigation of complaints filed against licensees confidential until the information becomes public record according to the Inspection of Public Records Act.

K. Each licensee shall display a copy of his license and current renewal verification in a location accessible to public view at his place of practice.

History: Laws 1997, ch. 89, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

61-12D-15. Disciplinary actions; penalties. (Repealed effective July 1, 2028.)

A. The board, upon satisfactory proof that any ground enumerated in Section 13 [61-12D-13 NMSA 1978] of the Physical Therapy Act has been violated, may take the following disciplinary action singly or in combination:

- (1) issue a letter of censure or reprimand;
- (2) issue a restricted license, including requiring the licensee to report regularly to the board on matters related to the grounds for the restricted license;
- (3) suspend a license for a period determined by the board;
- (4) revoke a license;
- (5) refuse to issue or renew a license;
- (6) impose fines in accordance with the Physical Therapy Act; and
- (7) accept a voluntary surrendering of a license.

B. Disciplinary actions of the board shall be taken in accordance with the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

C. The board may institute any legal proceedings necessary to effect compliance with the Physical Therapy Act, including:

- (1) receiving and investigating complaints filed against licensees;
- (2) conducting an investigation at any time and on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of the Physical Therapy Act;
- (3) issuing subpoenas and compelling the attendance of witnesses or the production of documents relative to the case; and
- (4) appointing hearing officers. Hearing officers shall prepare and submit to the board findings of fact, conclusions of law and an order that shall be reviewed and voted upon by the board.

History: Laws 1997, ch. 89, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

61-12D-16. Unlawful practice; criminal and civil penalties; injunctive relief. (Repealed effective July 1, 2028.)

A. A person who engages in an activity requiring a license pursuant to the provisions of the Physical Therapy Act and who fails to obtain the required license; who violates any provision of the Physical Therapy Act; or who uses any word, title or representation to induce the false belief that the person is licensed to engage in the practice of physical therapy is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment of not more than one year, or both.

B. The board may apply for injunctive relief in any court of competent jurisdiction to enjoin a person from committing an act in violation of the Physical Therapy Act. Such injunction proceedings shall be in addition to and not in lieu of penalties and other remedies in the Physical Therapy Act.

C. The board may assess a civil penalty of up to one thousand dollars (\$1,000) for a first offense and up to five thousand dollars (\$5,000) for a second or subsequent offense against a licensee who aids or abets an unlicensed person to directly or indirectly evade the Physical Therapy Act or

the applicable licensing laws; or permits his license to be used by an unlicensed person with the intent to evade the Physical Therapy Act or the applicable licensing laws, pursuant to the notice of hearing and appeal procedures pursuant to the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978]. The civil penalties provided in this subsection are in addition to other disciplinary measures provided in the Physical Therapy Act. Civil penalties shall be deposited with the state treasurer to the credit of the current school fund.

History: Laws 1997, ch. 89, § 16.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

61-12D-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The physical therapy board is terminated on July 1, 2027 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Physical Therapy Act until July 1, 2028. Effective July 1, 2028, the Physical Therapy Act is repealed.

History: Laws 1997, ch. 89, § 17; 2003, ch. 428, § 13; 2009, ch. 96, § 10; 2015, ch. 119, § 14; 2021, ch. 50, § 10.

The 2021 amendment, effective June 18, 2021, extended the sunset date for the physical therapy board, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the physical therapy board to July 1, 2021, and the repeal date to July 1, 2022.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004".

61-12D-18. Temporary provision; existing regulations; licensure under prior law. (Repealed effective July 1, 2028.)

A. Existing rules regarding physical therapy services shall remain in effect until new rules are adopted pursuant to the provisions of the Physical Therapy Act.

B. A person licensed to perform physical therapy services pursuant to the provisions of prior law, whose license is valid on July 1, 1997, is entitled to renew his license pursuant to the provisions of the Physical Therapy Act.

History: Laws 1997, ch. 89, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

61-12D-19. Temporary provision; board members to continue. (Repealed effective July 1, 2028.)

On the effective date of this act, members serving on the physical therapists' licensing board shall continue to serve on the physical therapy board until their terms expire; thereafter, the governor shall appoint board members as provided in the Physical Therapy Act.

History: Laws 1997, ch. 89, § 20.

Delayed repeals. — For delayed repeal of this section, see 61-12D-17 NMSA 1978.

ARTICLE 12E

Naprapathic Practice

Sec.

61-12E-1. Repealed.
61-12E-2. Repealed.
61-12E-3. Repealed.
61-12E-4. Repealed.

Sec.

61-12E-5. Repealed.
61-12E-6. Repealed.
61-12E-7. Repealed.
61-12E-8. Repealed.

Sec.
61-12E-9. Repealed.
61-12E-10. Repealed.
61-12E-11. Repealed.
61-12E-12. Repealed.
61-12E-13. Repealed.

Sec.
61-12E-14. Repealed.
61-12E-15. Repealed.
61-12E-16. Repealed.
61-12E-17. Repealed.

61-12E-1. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-1 NMSA 1978, as enacted by Laws 2003, ch. 60, § 1, relating to the short title of the Naprapathic Practice Act, effective

July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-2. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-2 NMSA 1978, as enacted by Laws 2003, ch. 60, § 2, relating to definitions, effective July 1, 2011. For provisions

of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-3. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-3 NMSA 1978, as enacted by Laws 2003, ch. 60, § 3, relating to licensure, effective July 1, 2011. For provisions of

former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-4. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-4 NMSA 1978, as enacted by Laws 2003, ch. 60, § 4, relating to practice of naprapathy, effective July 1, 2011. For

provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-5. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-5 NMSA 1978, as enacted by Laws 2003, ch. 60, § 5, relating to education and professional qualifications, effective

July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-6. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-6 NMSA 1978, as enacted by Laws 2003, ch. 60, § 6, relating to license applications, effective July 1, 2011. For

provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-7. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-7 NMSA 1978, as enacted by Laws 2003, ch. 60, § 7, relating to designation as naprapath, effective July 1, 2011. For

provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-8. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-8 NMSA 1978, as enacted by Laws 2003, ch. 60, § 8, relating to license display, effective July 1, 2011. For provisions

of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-9. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-9 NMSA 1978, as enacted by Laws 2003, ch. 60, § 9, relating to the naprapathic practice board, effective July 1, 2011.

For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-10. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-10 NMSA 1978, as enacted by Laws 2003, ch. 60, § 10, relating to duties of the board, effective July 1, 2011. For

provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-11. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-11 NMSA 1978, as enacted by Laws 2003, ch. 60, § 11, relating to license renewal, effective July 1, 2011. For

provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-12. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-12 NMSA 1978, as enacted by Laws 2003, ch. 60, § 12, relating to license fees, effective July 1, 2011. For provisions

of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-13. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-13 NMSA 1978, as enacted by Laws 2003, ch. 60, § 13, relating to the naprapathy fund, effective July 1, 2011. For

provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-14. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-14 NMSA 1978, as enacted by Laws 2003, ch. 60, § 14, relating to administrative hearings, effective July 1, 2011. For

provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-15. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-15 NMSA 1978, as enacted by Laws 2003, ch. 60, § 15, relating to offenses and criminal penalties, effective July 1,

2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-16. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-16 NMSA 1978, as enacted by Laws 2003, ch. 60, § 16, relating to violations of act and civil penalties, effective July 1,

2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

61-12E-17. Repealed.

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-17 NMSA 1978, as enacted by Laws 2003, ch. 60, § 17, relating to termination of agency life, effective July 1, 2011. For

provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

ARTICLE 12F

Naprapathic Practice

Sec.

61-12F-1. Short title.

61-12F-2. Definitions.

61-12F-3. Naprapathic task force created.

61-12F-4. Practice of naprapathy; description.

61-12F-5. License required; exceptions; registration.

61-12F-6. Requirements for licensing.

Sec.

61-12F-7. Designation as naprapath; display of license.

61-12F-8. License renewal.

61-12F-9. License fees.

61-12F-10. Offenses; criminal penalties.

61-12F-11. Violation; civil penalties.

61-12F-1. Short title.

Sections 4 through 14 [61-12F-1 to 61-12F-11 NMSA 1978] of this act may be cited as the "Naprathic Practice Act".

History: Laws 2011, ch. 31, § 4.

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprathic Practice Act, effective July 1, 2011.

61-12F-2. Definitions.

As used in the Naprathic Practice Act:

- A. "board" means the New Mexico medical board; and
- B. "licensee" means a person licensed by the board to practice naprathic.

History: Laws 2011, ch. 31, § 5.

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprathic Practice Act, effective July 1, 2011.

61-12F-3. Naprathic task force created.

A. The "naprathic task force" is created under the direction of the board. The naprathic task force shall advise the board regarding licensure of napraths, approval of naprathic curricula and any other matters that are necessary to ensure the training and licensure of napraths.

B. The naprathic task force shall be composed of no fewer than two licensees, appointed by the board, who are residents of the state. Vacancies on the naprathic task force shall be filled by appointment by the board.

C. The naprathic task force shall develop guidelines for the board to consider in regard to:

- (1) regulating the licensure of napraths and the practice of naprathic and establishing minimum qualifications and hours of clinical experience required for licensure as a naprath;
- (2) prescribing the manner in which records of examinations and treatments shall be kept and maintained;
- (3) providing standards for professional responsibility and conduct;
- (4) identifying disciplinary actions and circumstances that require disciplinary action;
- (5) developing a means to provide information to all licensees in the state;
- (6) providing for the investigation of complaints against licensees or persons holding themselves out as practicing naprathic in the state;
- (7) providing for the publishing of information for the public about licensees and the practice of naprathic in the state;
- (8) providing for an orderly process for reinstatement of a license;
- (9) establishing criteria for acceptance of naprathic credentials or licensure from another jurisdiction;
- (10) providing criteria for advertising or promotional materials; and
- (11) any other matter necessary to implement the Naprathic Practice Act.

History: Laws 2011, ch. 31, § 6.

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprathic Practice Act, effective July 1, 2011.

61-12F-4. Practice of naprathic; description.

A. Naprathic practice includes the diagnosis and treatment of persons with connective tissue disorders through the use of special techniques, review of case history, examination and

palpation or treatment of a person by the use of connective tissue manipulation, exercise, postural counseling, nutritional counseling and the application or use of heat, cold, light, water, radiant energy, electricity, sound and air and assistive devices for the purpose of preventing, correcting or alleviating a physical disability. Naprapathic practice does not include surgery, acupuncture, Chinese herbal medicine, pharmacology or invasive diagnostic testing.

B. A naprapath treats contractures, muscle spasms, inflammations, scar tissue formation, adhesions, lesions, laxity, hypotonicity, rigidity, structural imbalances, bruises, contusions, muscular atrophy and partial separation of connective tissue fibers.

C. Naprapathic practice may require the:

- (1) performance of specialized tests and measurements;
- (2) administration of specialized treatment procedures; and
- (3) establishment and modification of naprapathic treatment programs!

D. A naprapath may advise, supervise or teach another in the performance of naprapathy.

E. A naprapath shall refer to a licensed physician any patient whose medical condition should, at the time of evaluation or treatment, be determined to be beyond the scope of practice of the naprapath.

History: Laws 2011, ch. 31, § 7.

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

61-12F-5. License required; exceptions; registration.

A. A person shall not practice naprapathy in the state without a valid license issued by the board.

B. A person who is a naprapath practitioner employed by a federal government facility or agency in New Mexico is not required to be licensed pursuant to the Naprapathic Practice Act.

C. A person who is enrolled in a program approved by the board to provide training for naprapaths or a person receiving continuing educational training to practice naprapathy is not required to be licensed or registered with the board.

D. A person teaching, advising or supervising students of naprapathy or teaching continuing education for naprapaths shall not practice naprapathy in New Mexico without a license by the board unless:

- (1) that person is in the state for less than one month;
- (2) that person is registered with the board as a teacher, advisor or supervisor; and
- (3) the practice occurs in the course of that person's duties as a teacher, advisor or supervisor.

E. Nothing in the Naprapathic Practice Act shall be construed to prevent a person qualified as a member of a recognized profession, the practice of which requires a license or is regulated pursuant to the laws of New Mexico, from rendering services within the scope of the person's license or a state rule adopted to regulate the profession; provided that the person does not make a representation as being a naprapath.

History: Laws 2011, ch. 31, § 8.

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

61-12F-6. Requirements for licensing.

A. The board shall grant a license to practice naprapathy to a person who:

- (1) is at least twenty-one years of age;
- (2) has submitted to the board:
 - (a) a completed application for licensing on a form provided by the board;
 - (b) required documentation as required by the board; and
 - (c) the required fees;
- (3) has graduated from a two-year college-level program or an equivalent program approved by the board;

(4) has completed, in not less than three years, a four-year academic curriculum in naprapathy that is approved by the board, and the person has successfully completed one hundred thirty-two hours of academic credit, including sixty-six credit hours in basic science courses with emphasis on the study of connective tissue, and sixty-six credit hours in clinical naprapathic science, theory and application;

(5) has passed the national board of naprapathic examiners examination or holds a valid license as a naprapath in another jurisdiction; and

(6) has met all other requirements of the board.

B. The board may require a personal interview with an applicant to evaluate that person's qualifications for a license.

History: Laws 2011, ch. 31, § 9. **Effective dates.** — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

61-12F-7. Designation as naprapath; display of license.

A. A licensee is designated a "naprapath" and may use that title in connection with the practice of the profession of naprapathy.

B. A licensee may use the title "doctor of naprapathy" or the letters "D.N." following the licensee's name to indicate the licensee's professional status.

C. A licensee shall display the licensee's license and diplomas in the licensee's place of business in a location clearly visible to the licensee's patients.

History: Laws 2011, ch. 31, § 10. **Effective dates.** — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

61-12F-8. License renewal.

A. The board shall review licenses for renewal annually, and all licenses to be renewed shall be renewed on July 1. Applicants for license renewal shall submit:

- (1) a renewal application on a form provided by the board; and
- (2) except as provided in Section 61-1-34 NMSA 1978, a license renewal fee.

B. The board may require proof of continuing education or other proof of competence as a requirement for renewal.

History: Laws 2011, ch. 31, § 11; 2020, ch. 6, § 34. **The 2020 amendment**, effective July 1, 2020, provided an exception to the license renewal fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, Paragraph A(2), added "except as provided in Section 61-1-34 NMSA 1978".

61-12F-9. License fees.

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable administrative and licensing fees, but an individual fee shall not exceed one thousand dollars (\$1,000).

History: Laws 2011, ch. 31, § 12; 2020, ch. 6, § 35. **The 2020 amendment**, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

61-12F-10. Offenses; criminal penalties.

A person who practices naprapathy without a license is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2011, ch. 31, § 13.

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

61-12F-11. Violation; civil penalties.

The board may fine any person who intentionally violates the provisions of the Naprapathic Practice Act up to one thousand dollars (\$1,000) or may suspend or revoke the licensee's authority to practice naprapathy in New Mexico.

History: Laws 2011, ch. 31, § 14.

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

Temporary provisions. — Laws 2011, ch. 31, § 15, provided:

A. On July 1, 2011, all functions, appropriations, money, records, furniture, equipment and other property

of the naprapathic practice board shall be transferred to the New Mexico medical board.

B. On the effective date of this act, contractual obligations of the naprapathic practice board are binding on the New Mexico medical board.

C. On the effective date of this act, all references in law to the naprapathic practice board shall be deemed to be references in law to the New Mexico medical board.

ARTICLE 12G

Naturopathic Doctors' Practice

Sec. 61-12G-1. Short title.
61-12G-2. Definitions.
61-12G-3. Qualifications for licensure.
61-12G-4. Approved naturopathic medical educational program.
61-12G-5. Display of license.
61-12G-6. Scope of practice.
61-12G-7. Referral requirement.

Sec. 61-12G-8. Prohibitions.
61-12G-9. Exemptions.
61-12G-10. Protected titles.
61-12G-11. Naturopathic doctors' advisory council created.
61-12G-12. Council duties.
61-12G-13. License expiration; renewal; denial; revocation; continuing education.

61-12G-1. Short title.

Sections 1 through 13 [61-12G-1 through 61-12G-13 NMSA 1978] of this act may be cited as the "Naturopathic Doctors' Practice Act".

History: Laws 2019, ch. 244, § 1.

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-12G-2. Definitions.

As used in the Naturopathic Doctors' Practice Act:

A. "approved naturopathic medical educational program" means an educational program that the board has approved as meeting the requirements of Section 4 [61-12G-4 NMSA 1978] of the Naturopathic Doctors' Practice Act that prepares naturopathic doctors for the practice of naturopathic medicine;

B. "association" means an entity that is approved by the American association of naturopathic physicians, which entity represents the interests of naturopathic doctors in the state;

C. "biological product" means any of the following that is applicable to the prevention, treatment or cure of a disease or condition of human beings:

- (1) a virus;
- (2) a therapeutic serum;
- (3) a toxin;
- (4) an antitoxin;
- (5) a vaccine;
- (6) blood;

- (7) a blood component or derivative;
 - (8) an allergenic product;
 - (9) a protein, except any chemically synthesized polypeptide;
 - (10) a product that is analogous to any of the products listed in Paragraphs (1) through (9) of this subsection; or
 - (11) arsphenamine, a derivative of arsphenamine or any other trivalent organic arsenic compound;
- D. "board" means the New Mexico medical board established pursuant to the Medical Practice Act;
- E. "clinical laboratory procedure" means the use of venipuncture consistent with naturopathic medical practice, commonly used diagnostic modalities consistent with naturopathic practice, the recording of a patient's health history, physical examination, ordering and interpretation of radiographic diagnostics and other standard imaging and examination of body orifices, excluding endoscopy and colonoscopy. "Clinical laboratory procedure" includes the practice of obtaining samples of human tissues, except surgical excision beyond surgical excision that is authorized as a minor office procedure;
- F. "controlled substance" means a drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];
- G. "council" means the naturopathic doctors' advisory council;
- H. "dangerous drug" has the same meaning as set forth in Section 26-1-2 NMSA 1978;
- I. "drug" has the same meaning as set forth in Section 26-1-2 NMSA 1978;
- J. "homeopathic medicine" means a system of medicine based on the use of infinitesimal doses of substances capable of producing symptoms similar to those of the disease treated, as listed in the homeopathic pharmacopoeia of the United States;
- K. "hygiene" means the use of preventive techniques, including personal hygiene, asepsis, public health and safety;
- L. "laboratory examination" means:
- (1) phlebotomy;
 - (2) a clinical laboratory procedure;
 - (3) an official examination;
 - (4) a physiological function test; or
 - (5) a screening or test that the board has authorized naturopathic doctors to perform, when indicated, which results are interpreted by the naturopathic doctor;
- M. "legend drug" means a drug that is an unscheduled dangerous drug;
- N. "license" means a license issued by the board to an individual pursuant to the Naturopathic Doctors' Practice Act and board rules authorizing that individual to practice naturopathic medicine in the state;
- O. "licensee" means a naturopathic doctor licensed by the board to practice naturopathic medicine in the state;
- P. "minor office procedure" means minor surgical care and procedures, including:
- (1) surgical care incidental to superficial laceration, lesion or abrasion, excluding surgical care to treat a lesion suspected of malignancy;
 - (2) the removal of foreign bodies located in superficial structures, excluding the globe of the eye;
 - (3) trigger point therapy;
 - (4) dermal stimulation;
 - (5) allergy testing and treatment; and
 - (6) the use of antiseptics and topical or local anesthetics;
- Q. "naturopathic doctor" means an individual licensed pursuant to the Naturopathic Doctors' Practice Act as a naturopathic doctor to practice naturopathic medicine in the state;
- R. "naturopathic medicine" means:
- (1) a system of health care for the prevention, diagnosis and treatment of human health conditions, injury and disease;
 - (2) the promotion or restoration of health; and

(3) the support and stimulation of a patient's inherent self-healing processes through patient education and the use of naturopathic therapies and therapeutic substances;

S. "naturopathic physical medicine" means the use of one or more of the following physical agents in a manner consistent with naturopathic medical practice on a part or the whole of the body, by hand or by mechanical means, in the resolution of a human ailment or conditions:

- (1) air;
- (2) water;
- (3) heat;
- (4) cold;
- (5) sound;
- (6) light;
- (7) electromagnetism;
- (8) colon hydrotherapy;
- (9) soft tissue therapy;
- (10) joint mobilization;
- (11) therapeutic exercise; or
- (12) naturopathic manipulation;

T. "naturopathic therapy" means the use of:

- (1) naturopathic physical medicine;
- (2) suggestion;
- (3) hygiene;
- (4) a therapeutic substance;
- (5) a dangerous drug;
- (6) nutrition and food science;
- (7) homeopathic medicine;
- (8) a clinical laboratory procedure; or
- (9) a minor office procedure;

U. "nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of food, water, herbs, roots, bark or natural food elements;

V. "prescription" has the same meaning as set forth in Section 26-1-2 NMSA 1978;

W. "professional examination" means a competency-based national naturopathic doctor licensing examination administered by the North American board of naturopathic examiners or its successor agency, which board has been nationally recognized to administer a naturopathic examination that represents federal standards of education and training;

X. "suggestion" means a technique using:

- (1) biofeedback;
- (2) hypnosis;
- (3) health education; or
- (4) health counseling; and

Y. "therapeutic substance" means any of the following exemplified in a standard naturopathic medical text, journal or pharmacopeia:

- (1) a vitamin;
- (2) a mineral;
- (3) a nutraceutical;
- (4) a botanical medicine;
- (5) oxygen;
- (6) a homeopathic medicine;
- (7) a hormone;
- (8) a hormonal or pharmaceutical contraceptive device; or
- (9) other physiologic substance.

History: Laws 2019, ch. 244, § 2.

IV, § 23, was effective June 14, 2019, 90 days after the

Effective dates. — Laws 2019, ch. 244 contained no adjournment of the legislature.
effective date provision, but, pursuant to N.M. Const., art.

61-12G-3. Qualifications for licensure.

The board shall license an applicant who:

- A. is of good moral character, in accordance with standards established by rules of the board;
- B. submits, in accordance with rules of the board, the following items to the board:
 - (1) an application for licensure designed and approved by the board and submitted in accordance with rules of the board;
 - (2) except as provided in Section 61-1-34 NMSA 1978, an application fee submitted in an amount and manner established by rules of the board;
 - (3) evidence that the applicant has graduated from an approved naturopathic medical educational program;
 - (4) evidence that the applicant has passed a professional examination;
 - (5) evidence that the applicant has passed a state jurisprudence examination that meets standards established in rules of the board; and
 - (6) evidence of professional liability insurance with policy limits not less than prescribed by the board;
- C. is determined by the board, upon recommendation by the council, to be physically and mentally capable of safely practicing naturopathic medicine with or without reasonable accommodation; and
- D. has not had a license to practice naturopathic medicine or other health care license registration or certificate refused, revoked or suspended by any other jurisdiction for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine unless that license, registration or certification has been restored to good standing by that jurisdiction.

History: Laws 2019, ch. 244, § 3; 2020, ch. 6, § 36.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children,

and for certain veterans; and in Subsection B, Paragraph B(2), added "except as provided in Section 61-1-34 NMSA 1978".

61-12G-4. Approved naturopathic medical educational program.

With the advice and consent of the council, the board shall establish by rule guidelines for an approved naturopathic medical educational program, which guidelines shall meet the following requirements and the board's specifications for the education of naturopathic doctors. The approved naturopathic medical educational program shall:

- A. offer graduate-level, full-time didactic and supervised clinical training;
- B. be accredited, or shall have achieved candidacy status for accreditation, by the council on naturopathic medical education or an equivalent federally recognized accrediting body for naturopathic medical programs that is also recognized by the board; and
- C. be conducted by an institution, or a division of an institution of higher education, that:
 - (1) is accredited or is a candidate for accreditation by a regional or national institutional accrediting agency recognized by the United States secretary of education or a diploma-granting, degree-equivalent college or university; or
 - (2) meets equivalent standards for recognition of accreditation established in rules of the board for medical education programs offered in Canada.

History: Laws 2019, ch. 244, § 4.

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-12G-5. Display of license.

A licensee shall display the licensee's license in the licensee's place of business in a location clearly visible to the licensee's patients and shall also display evidence of the licensee having completed an approved naturopathic medical educational program.

History: Laws 2019, ch. 244, § 5.

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-12G-6. Scope of practice.

A. A licensee may practice naturopathic medicine only to provide primary care, as "primary care" is defined in rules of the board, as follows:

(1) in collaboration with a physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978]; and

(2) in alignment with naturopathic medical education to:

- (a) perform physical examinations;
- (b) order laboratory examinations;
- (c) order diagnostic imaging studies;
- (d) interpret the results of laboratory examinations for diagnostic purposes;
- (e) order and, based on a radiologist's report, take action on diagnostic imaging studies in a manner consistent with naturopathic training;

(f) prescribe, administer, dispense and order the class of drugs that excludes the natural derivatives of opium, which are morphine and codeine, and related synthetic and semi-synthetic compounds that act upon opioid receptors;

(g) after passing a pharmacy examination authorized by rules of the board, prescribe, administer, dispense and order: 1) all legend drugs; and 2) testosterone products and all drugs within Schedules III, IV and V of the Controlled Substances Act, excluding all benzodiazapines, opioids and opioid derivatives;

(h) administer intramuscular, intravenous, subcutaneous, intra-articular and intradermal injections of substances appropriate to naturopathic medicine;

(i) use routes of administration that include oral, nasal, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous, intra-articular and intramuscular consistent with the education and training of a naturopathic doctor;

(j) perform naturopathic physical medicine;

(k) employ the use of naturopathic therapy; and

(l) use therapeutic devices, barrier contraception, intrauterine devices, hormonal and pharmaceutical contraception and durable medical equipment.

B. As used in this section, "collaboration" means the process by which a licensed physician and a naturopathic doctor jointly contribute to the health care and medical treatment of patients; provided that:

(1) each collaborator performs actions that the collaborator is licensed or otherwise authorized to perform; and

(2) collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered.

History: Laws 2019, ch. 244, § 6; 2021, ch. 54, § 30.

The 2021 amendment, effective June 18, 2021, removed a reference to the Osteopathic Medicine Act; and

in Subsection A, Paragraph A(1), after "Medical Practice Act", deleted "or the Osteopathic Medicine Act".

61-12G-7. Referral requirement.

A licensee shall refer to a physician authorized to practice in the state under the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] any patient whose medical condition should, at the time of evaluation or treatment, be determined to be beyond the scope of practice of the licensee.

History: Laws 2019, ch. 244, § 7; 2021, ch. 54, § 31.

The 2021 amendment, effective June 18, 2021, after "Medical Practice Act", deleted "or the Osteopathic Medicine Act".

61-12G-8. Prohibitions.

A licensee shall not:

- A. provide care outside of the scope of primary care, as that term is defined in rules of the board;
- B. perform surgery outside of the scope of minor office procedures permitted in the employment of naturopathic therapy;
- C. use general or spinal anesthetics;
- D. administer ionizing radioactive substances for therapeutic purposes;
- E. perform a surgical procedure using a laser device;
- F. perform a surgical procedure involving any of the following areas of the body that extend beyond superficial tissue:
 - (1) eye;
 - (2) ear;
 - (3) tendon;
 - (4) nerves;
 - (5) veins; or
 - (6) artery;
- G. perform a surgical abortion;
- H. treat any lesion suspected of malignancy or requiring surgical removal; or
- I. perform acupuncture.

History: Laws 2019, ch. 244, § 8.

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-12G-9. Exemptions.

Nothing in the Naturopathic Doctors' Practice Act shall be construed to prohibit or to restrict:

- A. the practice of a health care profession by an individual who is licensed, certified or registered under other laws of this state and who is performing services within the individual's authorized scope of practice;
- B. the practice of naturopathic medicine by a student enrolled in an approved naturopathic medical educational program; provided that the practice of naturopathic medicine by a student is performed pursuant to a course of instruction or an assignment from an instructor and under the supervision of the instructor who is a licensee or a duly licensed professional in the instructed field;
- C. any person that sells a vitamin or herb from providing information about the vitamin or herb;
- D. the practice of naturopathic medicine by persons who are licensed to practice in any other state or district in the United States and who enter this state to consult with a naturopathic doctor of this state; provided that the consultation is limited to examination, recommendation or testimony in litigation; or
- E. any person or practitioner who is not licensed as a naturopathic doctor from recommending ayurvedic medicine, herbal remedies, nutritional advice, homeopathy or other therapy that is within the scope of practice of the Unlicensed Health Care Practice Act [61-35-1 NMSA 1978]; provided that the person or practitioner shall not:
 - (1) use a title protected pursuant to Section 10 [61-12G-10 NMSA 1978] of the Naturopathic Doctors' Practice Act;
 - (2) represent or assume the character or appearance of a licensee; or
 - (3) otherwise use a name, title or other designation that indicates or implies that the person is a licensee.

History: Laws 2019, ch. 244, § 9.

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-12G-10. Protected titles.

A. A licensee shall use the title "naturopathic doctor" and the recognized abbreviation "N.D."

B. A licensee has the exclusive right to use the following terms in reference to the licensee's self:

- (1) "naturopathic doctor";
- (2) "doctor of naturopathic medicine";
- (3) "doctor of naturopathy";
- (4) "N.D.";
- (5) "ND";
- (6) "NMD"; and
- (7) "N.M.D."

C. An individual represents the individual's self to be a naturopathic doctor when the individual uses or adopts any of the following terms in reference to the individual's self:

- (1) "naturopathic doctor";
- (2) "doctor of naturopathic medicine";
- (3) "doctor of naturopathy";
- (4) "N.D.";
- (5) "ND";
- (6) "NMD"; and
- (7) "N.M.D."

D. An individual shall not represent the individual's self to the public as a naturopathic doctor, a doctor of naturopathic medicine or a doctor of naturopathy, or as being otherwise authorized to practice naturopathic medicine in the state, unless the individual is a licensee.

E. A licensee shall not represent the licensee's self as a "naturopathic physician"; provided that representing that the licensee is a member of an organization that uses the term "naturopathic physicians" in the organization's name shall not be construed to be a violation of the provisions of this subsection.

History: Laws 2019, ch. 244, § 10.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art.

61-12G-11. Naturopathic doctors' advisory council created.

A. The "naturopathic doctors' advisory council" is created as a council to the board under the direction of the board. The council shall advise the board regarding:

- (1) licensure of naturopathic doctors; and
- (2) the board's approval of matters relating to the training and licensure of naturopathic doctors.

B. By July 1, 2019, the board shall appoint an initial council of one member for a term of four years and two members for terms of three years each. The initial council shall consist of three voting members as follows:

- (1) either:
 - (a) two members of an association; or
 - (b) one member of an association and one member who is a physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] who has worked collaboratively with a member of an association for at least two years prior to being appointed to the council; and
- (2) one member who is a resident of the state who is not, and never has been, a licensed health care practitioner and who does not have an interest in naturopathic education, naturopathic medicine or naturopathic business or practice.

C. As the terms of the initial council members expire, the board shall appoint successors for terms of four years each as follows:

(1) either:
 (a) two licensees; or
 (b) one licensee and one member who is a physician licensed pursuant to the Medical Practice Act who has worked collaboratively with a member of the association for at least two years prior to being appointed to the council; and

(2) one member who is a resident of the state who is not, and never has been, a licensed health care practitioner and who does not have an interest in naturopathic education, naturopathic medicine or naturopathic business or practice.

D. By August 1, 2019, the board shall call the first meeting of the council, at which meeting members shall elect a chair. By August 1, 2020 and at least once during each calendar quarter thereafter, the council shall hold a meeting at the call of the chair. The council may hold additional meetings at the call of the chair or at the written request of any two members of the council.

E. Vacancies on the council shall be filled by the board from a list of not fewer than three candidates provided by the association.

F. A majority of the council membership shall constitute a quorum.

G. At the discretion of the board, members of the council may receive per diem and mileage reimbursement pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 2019, ch. 244, § 11.

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-12G-12. Council duties.

The council shall develop guidelines for the board to consider for rulemaking with regard to:

A. regulating the licensure of naturopathic doctors and determining the hours of continuing education units required for maintaining licensure as a naturopathic doctor;

B. prescribing the manner in which records of examinations and treatments shall be kept and maintained;

C. establishing standards for professional responsibility and conduct;

D. identifying disciplinary actions and circumstances that require disciplinary action;

E. developing a means to provide information to all licensees in the state;

F. providing for the investigation of complaints against licensees or persons holding themselves out as naturopathic doctors in the state;

G. providing for the publication of information for the public about licensees and the practice of naturopathic medicine in the state;

H. providing for an orderly process for reinstatement of a license;

I. establishing criteria for advertising or promotional materials;

J. establishing by rule, in accordance with the Naturopathic Doctors' Practice Act:

(1) continuing education hours and content;

(2) standards for the state jurisprudence examination;

(3) schedules for providing licensing examinations and for the issuance of examination results;

(4) procedures and standards for reviewing licensing examination scores; and

(5) procedures for reviewing transcripts demonstrating completion of the approved naturopathic medical educational program;

K. the requirements for issuance and renewal of licenses; and

L. any other matter necessary to implement the Naturopathic Doctors' Practice Act.

History: Laws 2019, ch. 244, § 12.

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-12G-13. License expiration; renewal; denial; revocation; continuing education.

A. A license issued or renewed pursuant to the Naturopathic Doctors' Practice Act shall expire three years following its issuance or last renewal.

B. The board may renew the license of any licensee who, upon the expiration of the licensee's license:

- (1) has submitted an application for renewal;
- (2) has paid the renewal fee established by rules of the board;

(3) meets the qualifications for licensure set forth in the Naturopathic Doctors' Practice Act and rules of the board; and

- (4) meets the continuing education requirements established by the board.

C. The board shall grant applicants and licensees for whom the board intends to refuse to issue or renew a license, or whose license the board proposes to revoke or suspend, opportunity for a hearing in accordance with the procedures provided in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

History: Laws 2019, ch. 244, § 13.

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ARTICLE 13

Nursing Home Administrators

Sec.

61-13-1. Short title. (Repealed effective July 1, 2026.)

61-13-2. Definitions. (Repealed effective July 1, 2026.)

61-13-3. Criminal offender's character evaluation. (Repealed effective July 1, 2026.)

61-13-4. Board of nursing home administrators. (Repealed effective July 1, 2026.)

61-13-4.1. Repealed.

61-13-5. Organization of board; meetings. (Repealed effective July 1, 2026.)

61-13-6. Duties of the board. (Repealed effective July 1, 2026.)

61-13-7. Compensation of board members. (Repealed effective July 1, 2026.)

61-13-8. Licensure of nursing home administrators. (Repealed effective July 1, 2026.)

61-13-9. Educational programs. (Repealed effective July 1, 2026.)

Sec.

61-13-10. Licensure by examinations by board. (Repealed effective July 1, 2026.)

61-13-11. Expedited licensure without examination. (Repealed effective July 1, 2026.)

61-13-12. License and renewal fees; board expenditures. (Repealed effective July 1, 2026.)

61-13-13. Refusal, suspension or revocation of license. (Repealed effective July 1, 2026.)

61-13-14. Penalties. (Repealed effective July 1, 2026.)

61-13-15. Injunctive proceedings. (Repealed effective July 1, 2026.)

61-13-16. Exemptions. (Repealed effective July 1, 2026.)

61-13-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2026.)

61-13-1. Short title. (Repealed effective July 1, 2026.)

Chapter 61, Article 13 NMSA 1978 may be cited as the "Nursing Home Administrators Act".

History: 1953 Comp., § 67-37-1, enacted by Laws 1970, ch. 61, § 1; 2013, ch. 166, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

The 2013 amendment, effective June 14, 2013, added the NMSA chapter and article for the Nursing Home Administrators Act; and at the beginning of the sentence, deleted "This act" and added "Chapter 61, Article 13 NMSA 1978".

ANNOTATIONS

Law reviews. — For article, "Heart of Stone: What is Revealed About the Attitude of Compassionate Conservatives Toward Nursing Home Practices, Tort Reform, and Noneconomic Damages", see 35 N.M.L. Rev. 337 (2005).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Licensing and regulation of nursing or rest homes, 53 A.L.R.4th 689.

Liability of nursing home for violating statutory duty to notify third party concerning patient's medical condition, 46 A.L.R.5th 821.

61-13-2. Definitions. (Repealed effective July 1, 2026.)

As used in the Nursing Home Administrators Act:

- A. "board" means the board of nursing home administrators;
- B. "nursing home administrator" means any individual who is responsible for planning, organizing, directing and controlling the operation of a nursing home or who shares such functions with one or more persons in operating a nursing home;
- C. "nursing home" means any nursing institution or facility required to be licensed under state law as a nursing facility by the public health division of the department of health, whether proprietary or nonprofit, including skilled nursing home facilities, and whether a separate entity or a part of a medical institutional facility; and
- D. "practice of nursing home administration" means the planning, organizing, directing and control of the operation of a nursing home.

History: 1953 Comp., § 67-37-2, enacted by Laws 1970, ch. 61, § 2; 1993, ch. 245, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, made stylistic changes in Subsection B, and substituted "facility by the public health division of the department of health" for "home by the health and social services department" and deleted "extended care facilities" before "skilled nursing home facilities" in Subsection C.

ANNOTATIONS

Intermediate care facility for mentally retarded properly licensed by the health and social services department (now human services department) as an intermediate care facility is not a nursing home as defined by this section; its administrator is not, therefore, required to be licensed as a nursing home administrator. 1988 Op. Att'y Gen. No. 88-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40A Am. Jur. 2d Hospitals and Asylums § 8.
7 C.J.S. Asylums § 1.

61-13-3. Criminal offender's character evaluation. (Repealed effective July 1, 2026.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Nursing Home Administration [Administrators] Act.

History: 1953 Comp., § 67-37-2.1, enacted by Laws 1974, ch. 78, § 35.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

Bracketed material. — The bracketed word "Administrators" was inserted by the compiler and is not part of the law.

61-13-4. Board of nursing home administrators. (Repealed effective July 1, 2026.)

A. There is created the "board of nursing home administrators". The board shall be administratively attached to the regulation and licensing department. The board shall consist of seven members appointed by the governor to three-year terms staggered so that no more than three terms expire in any one year. Three members of the board shall be nursing home administrators licensed and practicing under the Nursing Home Administrators Act for a minimum of five years and who have never been disciplined by the board, one member shall be a practicing physician licensed in this state and three members shall be from the public who have no significant financial interest, direct or indirect, in the nursing home industry.

B. Within ninety days of a vacancy, the governor shall appoint a person to fill the unexpired portion of the term. Board members shall be citizens of the United States and residents of the state, and not more than one member shall be an employee of a state or other public agency.

History: 1953 Comp., § 67-37-3, enacted by Laws 1970, ch. 61, § 3; 1977, ch. 34, § 1; 1991, ch. 189, § 19; 1993, ch. 245, § 2; 1997, ch. 267, § 1; 2003, ch. 408, § 19.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

Cross references. — For the Uniform Licensing Act, see 61-1-1 NMSA 1978 et seq.

The 2003 amendment, effective July 1, 2003, substituted "The board shall be administratively attached to the

regulation and licensing department. The board shall consist" for "consisting" following "nursing home administrators" near the beginning of Subsection A.

The 1997 amendment, effective June 20, 1997, rewrote the section to such an extent that a detailed comparison would be impracticable.

The 1993 amendment, effective June 18, 1993, deleted the former third and fourth sentences of Subsection B, which related to the qualifications of the three members

of the board initially appointed as nursing home or hospital administrators.

The 1991 amendment, effective June 14, 1991, deleted "of examiners" following "Board" in the section heading; in Subsection A, substituted "created the" for "created a state" and "seven members" for "five members" in the first sentence, substituted "one member" for "two members" and added "and three members shall be from the public" at the end of the second sentence and made related stylistic changes; in Subsection B, deleted the former first sentence relating to appointment of members of the original board, divided the former second sentence into two sentences and rewrote the provision which read "Thereafter all appointments to the board shall be for a term of three

years or less so that the term of each member expires on June 30 in the third year after his appointment", substituted "three members" for "four members" in the fourth and fifth sentences, substituted "health services division of the health and environment department" for "health facilities service division of the health and social services department" in the fifth sentence and made related and minor stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. 70
C.J.S. Asylums § 5.

61-13-4.1. Repealed.

Repeals. — Laws 1991, ch. 189, § 25 repealed 61-13-4.1 NMSA 1978, as enacted by Laws 1978, ch. 206, § 2, relating to lay membership, effective June 14, 1991. For

provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

61-13-5. Organization of board; meetings. (Repealed effective July 1, 2026.)

The board shall elect annually from its membership a chairman and such other officers as may be necessary. The board shall meet at least three times a year and at such other times as it deems appropriate. Meetings shall be at the call of the chairman of the board or upon the call of any two members of the board. A majority of the board shall constitute a quorum at any meeting or hearing of the board. Any board member failing to attend three consecutive meetings of the board, at least two of which were regular meetings, shall automatically be dropped as a member of the board.

History: 1953, Comp., § 67-37-4, enacted by Laws 1970, ch. 61, § 4.

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

ANNOTATIONS

Quorum. — Four members of the board of nursing home administrators is a quorum, 1989 Op. Att'y Gen. No. 89-08.

The expiration of a board member's term of office or a member's resignation does not create a corporeal "vacancy". Until successors are appointed who duly qualify for office, the current six members continue to serve in office, and accordingly, the quorum requirement remains at four. 1989 Op. Att'y Gen. No. 89-08.

61-13-6. Duties of the board. (Repealed effective July 1, 2026.)

The board shall:

A. promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to adopt and enforce standards for licensing nursing home administrators and to carry into effect the provisions of the Nursing Home Administrators Act;

B. approve for licensure applicants for:

- (1) initial licensure;
- (2) annual renewal of current, active licenses;
- (3) reciprocity;
- (4) reinstatement of revoked or suspended licenses; and
- (5) reactivation of inactive or expired licenses;

C. cause the prosecution or enjoinder of all persons violating the Nursing Home Administrators Act and deny, suspend or revoke licenses in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

D. submit a written annual report to the governor and the legislature detailing the actions of the board and including an accounting of all money received and expended by the board; and

E. maintain a register of licensees and a record of all applicants for licensure received by the board.

History: 1953 Comp., § 67-37-5, enacted by Laws 1970, ch. 61, § 5; 1993, ch. 245, § 3; 2003, ch. 408, § 20; 2022, ch. 39, § 55.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of nursing home administrators is required to follow the provisions of the State Rules Act when promulgating rules; in the introductory clause, deleted "it is the duty of", and after "The board", deleted "to" and added "shall"; and in Subsection A, deleted "formulate, adopt and regularly revise such" and added "promulgate", and after "rules", deleted "and regulations not inconsistent with law

as may be necessary" and added "in accordance with the State Rules Act".

The 2003 amendment, effective July 1, 2003, deleted former Subsection E, employment of personnel, and redesignated former Subsection F as present Subsection E.

The 1993 amendment, effective June 18, 1993, made a stylistic change in the introductory language and in Subsection A, and rewrote Subsection B.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 C.J.S. Asylums § 5.

61-13-7. Compensation of board members. (Repealed effective July 1, 2026.)

Members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

History: 1953 Comp., § 67-37-6, enacted by Laws 1970, ch. 61, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

61-13-8. Licensure of nursing home administrators. (Repealed effective July 1, 2026.)

The board shall issue a license as a nursing home administrator to each applicant who files an application in the form and manner prescribed by the board, accompanied by the required fee, and who furnishes evidence, including a criminal records check satisfactory to the board that the applicant:

A. has successfully completed a course of study for a baccalaureate degree and has been awarded such degree from an accredited institution in a course of study approved by the board as being adequate preparation for nursing home administrators;

B. demonstrates professional competence by passing an examination in nursing home administration as prepared and published by the professional examination service or such other nationally recognized examination as the board prescribes in its rules;

C. demonstrates knowledge of state rules governing the operation of nursing homes in a manner the board prescribes in its rules; and

D. has successfully completed an internship or administrator-in-training program as prescribed by the board in its rules.

History: 1953 Comp., § 67-37-7, enacted by Laws 1970, ch. 61, § 7; 1973, ch. 68, § 1; 1993, ch. 245, § 4; 1997, ch. 267, § 2; 2022, ch. 39, § 56.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

Cross references. — For age of majority, see 28-6-1 NMSA 1978.

For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2022 amendment, effective May 18, 2022, revised qualifications for licensure as a nursing home administrator; and deleted former Subsection A, which provided "is of good moral character", and redesignated former Subsections B through E as Subsections A through D, respectively.

The 1997 amendment, effective June 20, 1997, deleted the subsection designation "A" at the beginning of the section; redesignated former Paragraphs (1) through (5) as Subsections A through E; and inserted "including a criminal records check," in the introductory paragraph.

The 1993 amendment, effective June 18, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40A Am. Jur. 2d Hospitals and Asylums §§ 5, 6; 51 Am. Jur. 2d Licenses and Permits § 4.

7 C.J.S. Asylums § 7; 53 C.J.S. Licenses §§ 34, 39.

61-13-9. Educational programs. (Repealed effective July 1, 2026.)

The board shall:

A. approve or establish appropriate courses of study within and without the state to enable applicants for licensure to attain the requisite professional skill to qualify them to sit for the examination for licensure; and

B. approve or establish appropriate courses of study to further the professional qualifications of licensees through continuing educational programs.

History: 1953 Comp., § 67-37-8, enacted by Laws 1970, ch. 61, § 8; 1993, ch. 245, § 5.

The 1993 amendment, effective June 18, 1993, deleted "Provisional license" from the beginning of the section heading; deleted former Subsection A, which provided

for the issuance of a provisional license, expiring June 20, 1972, to certain applicants; and rewrote former Subsection B as present Subsection A, renumbering former Subsection C as present Subsection B.

61-13-10. Licensure by examinations by board. (Repealed effective July 1, 2026.)

A. Upon investigation of the application and other evidence submitted, the board shall, not less than thirty days prior to any scheduled examination, notify each applicant that the application and evidence submitted is satisfactory or unsatisfactory and rejected. If rejected, the notice shall state the reasons for rejection.

B. Examinations shall be held at least twice each year at such a time and place as the board may determine, and at other times as in the opinion of the board the number of applicants for licensure warrants.

C. The board shall administer the national standards examination in a manner specified by the national examination service with which it contracts.

History: 1953 Comp., § 67-37-9, enacted by Laws 1970, ch. 61, § 9; 1993, ch. 245, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, rewrote Subsection C.

61-13-11. Expedited licensure without examination. (Repealed effective July 1, 2026.)

A. The board shall issue an expedited license without examination to an out-of-state applicant in accordance with Section 61-1-31.1 NMSA 1978. The board shall issue the expedited license as soon as practicable but no later than thirty days after the person files an application with the required fees and demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

B. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept applicants for expedited licensure and determine the foreign countries from which it will accept applicants for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: 1953 Comp., § 67-37-10, enacted by Laws 1970, ch. 61, § 10; 1993, ch. 245, § 7; 1997, ch. 267, § 3; 2022, ch. 39, § 57.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure without

examination, provided that the board of nursing home administrators shall issue an expedited license to an out-of-state applicant in accordance with Section 61-1-31.1 NMSA 1978 within thirty days after the applicant files an application with the required fees and demonstrates that the applicant holds a valid, unrestricted license and is in good standing with the licensing board in another

licensing jurisdiction, provided that if the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "Expedited"; in Subsection A, after "The board shall issue", deleted "a nursing home administrator's" and added "an expedited", after "license", deleted "temporary or regular", and deleted "to any person who holds a nursing home administrator's license current and in good

standing in another jurisdiction; provided that the board finds that the standards of licensure in the other jurisdiction are at least the substantial equivalent of those prevailing in this state and that the applicant meets the qualifications of the Nursing Home Administrators Act", and added the remainder of the subsection; and added Subsection B.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 1997 amendment, effective June 20, 1997, inserted "temporary or regular," near the beginning of the section.

The 1993 amendment, effective June 18, 1993, substituted "nursing home administrator's license current and in good standing, in" for "current license as a nursing home administrator from".

61-13-12. License and renewal fees; board expenditures. (Repealed effective July 1, 2026.)

A. Except as provided in Section 61-1-34 NMSA 1978, the board shall require by appropriate rule or regulation that applicants for licensure as nursing home administrators pay a license fee in an amount set by the board not to exceed two hundred fifty dollars (\$250) and an annual renewal fee in an amount set by the board not to exceed two hundred dollars (\$200).

B. The board shall deposit all fees received by the board in a special fund maintained by the state treasurer for use in defraying the expenses of administration of the Nursing Home Administrators Act. Any unexpended balance remaining in the fund at the end of each fiscal year shall remain to the credit of the board.

C. The board may obtain and administer programs of grants-in-aid or financial assistance from any governmental agency or private source in the furtherance of programs consistent with the Nursing Home Administrators Act.

History: 1953 Comp., § 67-37-11, enacted by Laws 1970, ch. 61, § 11; 1992, ch. 69, § 1; 2020, ch. 6, § 37.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

The 1992 amendment, effective May 20, 1992, in Subsection A, substituted "shall" for "may", deleted "or

applicants for annual renewal" following "administrators", substituted "two hundred fifty dollars (\$250)" for "one hundred twenty-five dollars (\$125.00)", and substituted "two hundred dollars (\$200)" for "fifty dollars (\$50.00)".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 39 to 41. 53 C.J.S. Licenses §§ 64 to 73.

61-13-13. Refusal, suspension or revocation of license. (Repealed effective July 1, 2026.)

The board may refuse to issue or renew, or may suspend or revoke, any license in accordance with the procedures contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], on the grounds that the licensee or applicant:

- A. is guilty of fraud or deceit in procuring or attempting to procure or renew a license to practice as a nursing home administrator;
- B. is convicted of a felony;
- C. is guilty of gross incompetence;
- D. is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice as a nursing home administrator;

E. is guilty of failing to comply with any of the provisions of the Nursing Home Administrators Act or any rules or regulations of the board adopted and filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978];

F. has been declared mentally incompetent by regularly constituted authorities; provided that the revocation shall only be in effect during the period of such incompetency; or

G. is guilty of conduct that substantially deviates from reasonable standards of acceptable practice of nursing home administration, including but not limited to the following:

(1) he has been convicted of a misdemeanor substantially relating to the practice of nursing home administration;

(2) he has been found by a court of law, the board, an agency responsible for the certification and licensure of nursing homes, a state medicaid fraud and abuse unit or any other duly recognized state agency to be responsible for the neglect or abuse of nursing home residents or the misappropriation of their personal funds or property;

(3) he has been found by a state nursing home licensing board, an agency responsible for the certification and licensure of nursing homes or any other duly recognized state agency as responsible for substandard care in a nursing home;

(4) he has been found to have falsified records related to the residents or employees of a nursing home on the basis of race, religion, color, national origin, sex, age or handicap in violation of federal or state laws; or

(5) he has had a license revoked, suspended or denied by another state for any of the reasons contained in this section.

History: 1953 Comp., § 67-37-12, enacted by Laws 1970, ch. 61, § 12; 1993, ch. 245, § 8; 1997, ch. 267, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

Cross references. — For Mental Health and Developmental Disabilities Code, see 43-1-1 NMSA 1978 et seq.

The 1997 amendment, effective June 20, 1997, inserted "or renew" in the introductory paragraph and Subsection A; rewrote the introductory paragraph of Subsection G; and made stylistic changes.

The 1993 amendment, effective June 18, 1993, added Subsection G and made related grammatical changes.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses §§ 50 to 53.

61-13-14. Penalties. (Repealed effective July 1, 2026.)

It shall be a misdemeanor for any person to:

A. sell or fraudulently obtain or furnish any license or aid or abet in the obtaining or furnishing of any license under the Nursing Home Administrators Act;

B. practice as a nursing home administrator, under cover of any license or registration illegally or fraudulently obtained or unlawfully issued;

C. practice as a nursing home administrator or use in connection with his name any designation tending to imply that he is a nursing home administrator unless duly licensed and registered to so practice under the provisions of the Nursing Home Administrators Act; or

D. practice as a nursing home administrator without a valid license or during the time his license or registration issued under the provisions of the Nursing Home Administrators Act is suspended or revoked.

History: 1953 Comp., § 67-37-13, enacted by Laws 1970, ch. 61, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

Cross references. — For penalties for misdemeanors, see 31-19-1 NMSA 1978.

ANNOTATIONS

Intermediate care facility for mentally retarded properly licensed by the health and social services (now

human services) department as an intermediate care facility is not a nursing home as defined by Section 61-13-2C NMSA 1978; its administrator is not, therefore, required to be licensed as a nursing home administrator. 1988 Op. Att'y Gen. No. 88-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 72.

53 C.J.S. Licenses §§ 82 to 84.

61-13-15. Injunctive proceedings. (Repealed effective July 1, 2026.)

A. The board may, in the name of the state of New Mexico, through the attorney general, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act declared to be a misdemeanor by the Nursing Home Administrators Act.

B. If it be established that the defendant has been or is committing an act declared to be a misdemeanor by the Nursing Home Administrators Act, the court shall enter a decree perpetually enjoining said defendant from further committing such act.

C. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies in the Nursing Home Administrators Act.

History: 1953 Comp., § 67-37-14, enacted by Laws 1970, ch. 61, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

Cross references. — For injunctions, see Rules 1-065 and 1-066 NMRA.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 70.

61-13-16. Exemptions. (Repealed effective July 1, 2026.)

The Nursing Home Administrators Act does not apply to boardinghouses or to sheltered-care facilities.

History: 1953 Comp., § 67-37-15, enacted by Laws 1970, ch. 61, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-13-17 NMSA 1978.

Severability. — Laws 1970, ch. 61, § 16 provided for the severability of the Nursing Home Administrators Act if any part or application thereof is held invalid.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 18, 27, 34 to 38. 53 C.J.S. Licenses §§ 35, 36.

61-13-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2026.)

The board of nursing home administrators is terminated on July 1, 2025 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of Chapter 61, Article 13 NMSA 1978 until July 1, 2026. Effective July 1, 2026, Chapter 61, Article 13 NMSA 1978 is repealed.

History: 1953 Comp., § 67-37-16, enacted by Laws 1978, ch. 206, § 1; 1981, ch. 241, § 26; 1985, ch. 87, § 11; 1991, ch. 189, § 20; 1997, ch. 46, § 15; 2005, ch. 208, § 9; 2013, ch. 166, § 2; 2019, ch. 168, § 1.

The 2019 amendment, effective July 1, 2019, extended the termination date for the board of nursing; and changed "July 1, 2019", to "July 1, 2025", and changed "July 1, 2020", to "July 1, 2026".

The 2013 amendment, effective June 14, 2013, changed the agency termination date from 2013 to 2019, the termination of the operations date from 2014 to 2020, and the repeal date from 2014 to 2020.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997", substituted "2006" for "1998", and substituted "July 1, 2004, Chapter 61, Article 13 NMSA 1978" for "July 1, 1998 Article 13 of Chapter 61, NMSA 1978".

The 1991 amendment, effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

ARTICLE 14

Veterinary Medicine

Sec.

61-14-1. Short title. (Repealed effective July 1, 2024.)

61-14-2. Definitions. (Repealed effective July 1, 2024.)

61-14-3. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)

Sec.

61-14-4. Board created; terms; compensation; finance. (Repealed effective July 1, 2024.)

61-14-4.1. Protected actions; communication. (Repealed effective July 1, 2024.)

- Sec. 61-14-5. Board; duties. (Repealed effective July 1, 2024.)
- 61-14-5.1. Impaired veterinarian. (Repealed effective July 1, 2024.)
- 61-14-6. Veterinary technician examining committee; membership; terms; compensation. (Repealed effective July 1, 2024.)
- 61-14-7. Duties of the veterinary technician examining committee. (Repealed effective July 1, 2024.)
- 61-14-7.1. Animal sheltering committee; duties. (Repealed effective July 1, 2024.)
- 61-14-8. Application for license. (Repealed effective July 1, 2024.)
- 61-14-9. Examination. (Repealed effective July 1, 2024.)
- 61-14-10. License by endorsement. (Repealed effective July 1, 2024.)
- 61-14-11. Certification as veterinary technician; annual registration of employment; employment change; fees. (Repealed effective July 1, 2024.)
- Sec. 61-14-12. License, permit and registration renewal. (Repealed effective July 1, 2024.)
- 61-14-13. Denial, suspension or revocation of license. (Repealed effective July 1, 2024.)
- 61-14-14. Exemptions. (Repealed effective July 1, 2024.)
- 61-14-15. Persons previously licensed. (Repealed effective July 1, 2024.)
- 61-14-16. Responsibility. (Repealed effective July 1, 2024.)
- 61-14-17. Inoculation records; confidentiality. (Repealed effective July 1, 2024.)
- 61-14-18. Practicing without license; penalty. (Repealed effective July 1, 2024.)
- 61-14-19. Injunction. (Repealed effective July 1, 2024.)
- 61-14-20. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

61-14-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 14 NMSA 1978 may be cited as the "Veterinary Practice Act".

History: 1953 Comp., § 67-11-12, enacted by Laws 1967, ch. 62, § 1; 2011, ch. 30, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 2011 amendment, effective June 17, 2011, changed the statutory reference to the act.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of statutes or regulations relating to practice of veterinary medicine, 8 A.L.R.4th 223.

Veterinarian's liability for malpractice, 71 A.L.R.4th 811.

61-14-2. Definitions. (Repealed effective July 1, 2024.)

As used in the Veterinary Practice Act:

A. "animal" means any animal other than man;

B. "animal shelter":

(1) means:

(a) a county or municipal facility that provides shelter to animals on a regular basis, including a small animal impound facility; and

(b) a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and

(2) does not include a municipal zoological park;

C. "euthanasia" means to produce a humane death of an animal by standards deemed acceptable by the board as set forth in its rules;

D. "euthanasia agency" means a facility that provides shelter to animals on a regular basis, including a small animal impound facility, a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia;

E. "practice of veterinary medicine" means:

(1) the diagnosis, treatment, correction, change, relief or prevention of animal disease, deformity, defect, injury or other physical or mental condition, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique and the use of any procedure for artificial insemination, testing for pregnancy, diagnosing and treating sterility or infertility or rendering advice with regard to any of these;

(2) the representation, directly or indirectly, publicly or privately, of an ability and willingness to do any act mentioned in Paragraph (1) of this subsection; or

(3) the use of any title, words, abbreviation or letters in a manner or under circumstances that induce the belief that the person using them is qualified to do any act mentioned in Paragraph (1) of this subsection;

F. "veterinarian" means a person having the degree of doctor of veterinary medicine or its equivalent from a veterinary school or a person who has received a medical education in veterinary medicine in a foreign country and has thereafter entered the United States and fulfilled the requirements and standards set forth by the American veterinary medical association and has passed all examinations required by the board prior to being issued any license to practice veterinary medicine in this state;

G. "licensed veterinarian" means a person licensed to practice veterinary medicine in this state;

H. "veterinary school" means any veterinary college or any division of a university or college that is approved for accreditation by the American veterinary medical association;

I. "board" means the board of veterinary medicine;

J. "veterinary technician" means a skilled person certified by the board as being qualified by academic and practical training to provide veterinary services under the supervision and direction of the licensed veterinarian who is responsible for the performance of that technician;

K. "committee" means the veterinary technician examining committee;

L. "direct supervision" means the treatment of animals on the direction, order or prescription of a licensed veterinarian who is available on the premises and who has established a valid veterinarian-client-patient relationship;

M. "sheltering committee" means the animal sheltering committee;

N. "valid veterinarian-client-patient relationship" means:

(1) the veterinarian has assumed responsibility for making medical judgments regarding the health of an animal being treated and the need for and the course of the animal's medical treatment;

(2) the client has agreed to follow the instructions of the veterinarian;

(3) the veterinarian is sufficiently acquainted with an animal being treated, whether through examination of the animal or timely visits to the animal's habitat for purposes of assessing the condition in which the animal is kept, to be capable of making a preliminary or general diagnosis of the medical condition of the animal being treated; and

(4) the veterinarian is reasonably available for follow-up treatment; and

O. "veterinary medicine" means veterinary surgery, obstetrics, dentistry and all other branches or specialties of veterinary medicine.

History: 1953 Comp., § 67-11-13, enacted by Laws 1967, ch. 62, § 2; 1975, ch. 96, § 1; 1977, ch. 236, § 1; 1993, ch. 163, § 1; 2017, ch. 44, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 2017 amendment, effective July 1, 2018, defined "animal shelter", "euthanasia", "euthanasia agency", and "sheltering committee" as used in the Veterinary Practice Act; added new Subsections B through D and redesignated former Subsections B through I as Subsections E through L, respectively; and added a new Subsection M and redesignated former Subsections J and K as Subsections N and O, respectively.

The 1993 amendment, effective June 18, 1993, rewrote Subsection C; substituted "veterinary medicine" for "veterinary examiners" in Subsection F; added Subsections I to K; and made minor stylistic changes in Paragraph (3) of Subsection B and Subsection G.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 1.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 2, 5.

61-14-3. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [28-2-1 through 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Veterinary Practice Act.

History: 1953 Comp., § 67-11-13.1, enacted by Laws 1974, ch. 78, § 19.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

61-14-4. Board created; terms; compensation; finance. (Repealed effective July 1, 2024.)

A. The "board of veterinary medicine" is created. The board shall consist of seven members who are citizens of the United States and residents of New Mexico. Veterinary members shall have been licensed to practice veterinary medicine in the state for five years preceding their appointment to the board.

B. Members of the board and their successors shall be appointed by the governor. Five of the members shall be licensed veterinarians, and these appointments may be made from a list of five names for each professional vacancy, submitted to the governor by the New Mexico veterinary medical association. Two members shall represent the public and shall not have been licensed as veterinarians or have any significant financial interest, whether direct or indirect, in the occupation regulated.

C. Members shall be appointed to staggered terms of four years each. Appointments shall be made in such manner that the terms of no more than two board members expire on July 1 of each year. All board members shall hold office until their successors are appointed and qualified. Appointments to vacancies shall be for the unexpired terms. Board members shall not serve more than two consecutive four-year terms.

D. A majority of the members of the board constitutes a quorum for the transaction of business, except that the vote of four members is required for suspension or revocation of a license. The board shall elect a chairman and other necessary officers prescribed by regulation of the board.

E. Members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance. This reimbursement and all other expenses involved in carrying out the Veterinary Practice Act shall be paid exclusively from fees received pursuant to provisions of the Veterinary Practice Act. The board shall deposit all fees received pursuant to provisions of the Veterinary Practice Act with the state treasurer for the exclusive use of the board, and money shall be expended only upon vouchers certified by a majority of the board.

F. Any board member failing to attend, after proper notice, three consecutive meetings, either regular or special, shall automatically be removed as a member of the board.

History: 1953 Comp., § 67-11-14, enacted by Laws 1967, ch. 62, § 3; 1975, ch. 96, § 2; 1979, ch. 76, § 1; 1991, ch. 189, § 21; 1993, ch. 163, § 2; 1995, ch. 154, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 1995 amendment, effective June 16, 1995, substituted "shall" for "must" in the second sentence in Subsection A, deleted "in New Mexico" following "licensed veterinarians" in the second sentence in Subsection B, inserted "after proper notice" in Subsection F, and made minor stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, rewrote Subsection A, which formerly read "The 'board of veterinary examiners' is created. The board shall consist of seven members" and rewrote Subsection C to the extent that a detailed comparison is impracticable.

The 1991 amendment, effective June 14, 1991, substituted "seven members" for "six members" in Subsection A; in the second sentence in Subsection B, substituted "Two members" for "One member" and "veterinarians or" for "a veterinarian nor shall such public member"; rewrote Subsection C; and made a minor stylistic change in Subsection F.

ANNOTATIONS

Costs of hearings. — Per diem and mileage costs of board members to attend a disciplinary hearing cannot be assessed as costs against the veterinarian who is disciplined. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947, *aff'd in part, rev'g in part*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619.

61-14-4.1. Protected actions; communication. (Repealed effective July 1, 2024.)

A. No current or former member of the board, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, witness or any other person serving or having served the board shall bear liability or be subject to civil damages or criminal prosecutions for any action or omission undertaken or performed within the scope of the board's duties.

B. All written and oral communications made by any person to the board relating to actual or potential disciplinary action shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. All data,

communications and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except to the extent necessary to carry out the board's purposes or in a judicial appeal from the board's actions.

C. The board shall make available to interested members of the public information about a disciplinary action taken by the board pursuant to Section 61-14-13 NMSA 1978, including the name of the licensee, the nature of the violation of the Veterinary Practice Act and the disciplinary action taken.

D. No person or legal entity providing information to the board, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

History: Laws 1999, ch. 243, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

Effective dates. — Laws 1999, ch. 243 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 18, 1999, 90 days after adjournment of the legislature.

61-14-5. Board; duties. (Repealed effective July 1, 2024.)

The board shall:

A. examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in New Mexico and issue, renew, deny, suspend or revoke licenses in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

B. regulate artificial insemination and pregnancy diagnosis by establishing standards of practice and issuing permits to persons found qualified;

C. establish a schedule of license and permit fees based on the board's financial requirements for the ensuing year;

D. conduct investigations necessary to determine violations of the Veterinary Practice Act and discipline persons found in violation in accordance with the Uniform Licensing Act;

E. employ personnel necessary to carry out its duties;

F. in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], promulgate and enforce rules necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of the Veterinary Practice Act. The board shall make available to interested members of the public copies of the Veterinary Practice Act and all rules promulgated by the board;

G. examine applicants for veterinary technician certification purposes. Such examination shall be held at least once a year at the times and places designated by the board;

H. establish a five-member veterinary technician examining committee;

I. promulgate rules establishing continuing education requirements as a condition for license renewal;

J. regulate the operation of veterinary facilities, including:

(1) establishing requirements for operation of a veterinary facility in accordance with recognized standards for the practice of veterinary medicine;

(2) issuing permits to qualified veterinary facilities; and

(3) promulgating standards for inspection of veterinary facilities.

For purposes of this subsection, "veterinary facility" means a building, mobile unit, vehicle or other location where services included within the practice of veterinary medicine are provided;

K. perform the duties imposed on the board pursuant to the Animal Sheltering Act [Chapter 77, Article 1B NMSA 1978]; and

L. establish a five-member sheltering committee.

History: 1953 Comp., § 67-11-15, enacted by Laws 1967, ch. 62, § 4; 1975, ch. 96, § 3; 1977, ch. 167, § 1; 1993, ch. 163, § 3; 1995, ch. 154, § 2; 1999, ch. 243, § 1; 2017, ch. 44, § 2; 2022, ch. 39, § 58.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of veterinary medicine is required to

follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; in Subsection A, after "revoke licenses", added "in accordance with the Uniform Licensing Act"; in Subsection D, after "found in violation", added "in accordance with the Uniform Licensing Act"; and in Subsection F, added "in accordance with the State Rules Act".

The 2017 amendment, effective July 1, 2018, provided additional duties for the board of veterinary medicine; in Subsection F, replaced each occurrence of "regulations" with "rules"; in Subsection I, after "adopt", deleted "regulations" and added "rules"; and added new Subsections K and L.

Temporary provisions. — Laws 2017, ch. 44, § 15 provided that on July 1, 2018:

A. all personnel, appropriations, money, records, equipment, supplies and other property of the animal sheltering board shall be transferred to the board of veterinary medicine;

B. all contracts of the animal sheltering board shall be binding and effective on the board of veterinary medicine; and

C. all references in law to the animal sheltering board shall be deemed to be references to the board of veterinary medicine.

The 1999 amendment, effective June 18, 1999, deleted "annually" following "establish" in Subsection C, and rewrote Subsection J, which formerly read "adopt regulations for the inspection and operation of facilities in

accordance with recognized standards for the practice of veterinary medicine as a condition for licensure".

The 1995 amendment, effective June 16, 1995, added Subsection J and made minor stylistic changes in Subsections H and I.

The 1993 amendment, effective June 18, 1993, substituted "persons" for "licensed veterinarians" in Subsection D and substituted "education requirements as a condition for license renewal" for "educational requirements for veterinarians as a condition for the license renewal" in Subsection I.

ANNOTATIONS

Licensing duties not usurped by regulation and licensing department. — Neither the Regulation and Licensing Department Act, Sections 9-16-1 to 9-16-13 NMSA 1978, nor any rules and regulations that it has promulgated pursuant to that act, supersede the specific statutory powers and licensing duties that the legislature has given to the board of veterinary examiners pursuant to this article: The regulation and licensing department is to provide general administrative services to the board. 1987 Op. Att'y Gen. No. 87-58.

61-14-5.1. Impaired veterinarian. (Repealed effective July 1, 2024.)

A. The board may appoint an impaired-veterinarian committee to organize and administer a program that will:

(1) serve as a diversion program to which the board may refer licensees in lieu of or in addition to other disciplinary action under terms set by the board; and

(2) be a confidential source of treatment or referral for veterinarians who, on a voluntary basis and without the knowledge of the board, desire to avail themselves of treatment for emotionally based or chemical-dependence impairments.

B. The impaired-veterinarian committee shall:

(1) provide evaluations for veterinarians who request participation in the diversion program;

(2) review and designate treatment facilities and services to which veterinarians in the diversion program may be referred;

(3) receive and review information concerning the status and progress of participants in the diversion program;

(4) publicize the diversion program in coordination with veterinary professional associations; and

(5) prepare and provide reports at least annually to the board.

C. Each veterinarian referred to the diversion program by the board shall be informed of the procedures applicable to the diversion program, of the rights and responsibilities associated with participation in the diversion program and of the possible consequences of failure to participate in the diversion program. Failure to comply with any treatment requirement of the diversion program may result in termination of diversion program participation; termination of diversion program participation shall be reported to the board by the impaired-veterinarian committee. Participation in the diversion program shall not be a defense against, but may be considered in mitigating, any disciplinary action taken by the board. The board is not precluded from commencing a disciplinary action against a veterinarian who is participating in the diversion program or has been terminated.

D. No member of the board or the impaired-veterinarian committee shall be liable for civil damages because of acts or omissions that occur in administering the provisions of this section.

History: Laws 1993, ch. 163, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

61-14-6. Veterinary technician examining committee; membership; terms; compensation. (Repealed effective July 1, 2024.)

A. The "veterinary technician examining committee" shall consist of five members appointed by the board of veterinary medicine. The committee shall consist of two licensed veterinarians, one member of the board and two registered veterinary technicians.

B. Committee members shall serve for terms of four years except the board member on the committee shall be appointed for one year. With the exception of the board member on the committee, the terms of committee members shall be staggered by one year. Committee members shall serve until their successors have been appointed and qualified. Any vacancy shall be filled by appointment by the board of veterinary medicine for the remainder of the unexpired term.

C. Members of the committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: 1953 Comp., § 67-11-15.1, enacted by Laws 1975, ch. 96, § 4; 1993, ch. 163, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 1993 amendment, effective June 18, 1993, rewrote Subsections A and B to the extent that a detailed comparison is impracticable.

61-14-7. Duties of the veterinary technician examining committee. (Repealed effective July 1, 2024.)

A. The committee shall evaluate qualifications of education, skill and experience for certification of a person as a veterinary technician and provide forms and procedures for the board for certificates of qualification and for annual registration of employment.

B. The committee shall assist the board in the examination of applicants for veterinary technician certification. Such examination shall be held at least once a year at the times and places designated by the board.

History: 1953 Comp., § 67-11-15.2, enacted by Laws 1975, ch. 96, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

61-14-7.1. Animal sheltering committee; duties. (Repealed effective July 1, 2024.)

The sheltering committee shall:

A. develop a voluntary statewide dog and cat spay and neuter program in conjunction with animal shelters and euthanasia agencies;

B. develop criteria for individuals, nonprofit organizations, animal shelters and euthanasia agencies to receive assistance for dog and cat spaying and neutering from the animal care and facility fund; provided that assistance to individuals and nonprofit organizations shall only be given to individuals who have, or to nonprofit organizations that shall only provide assistance to service recipients who have, a household income that does not exceed two hundred percent of the current federal poverty level guidelines published by the United States department of health and human services; and

C. recommend to the board the disbursements of money from the animal care and facility fund to qualifying individuals, nonprofit organizations, animal shelters and euthanasia agencies.

History: Laws 2017, ch. 44, § 3; 2020, ch. 69, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 2020 amendment, effective July 1, 2020, established a household income level for assistance for dog and cat spaying and neutering from the animal care and facility fund; in Subsection B, after "dog and cat", deleted

"sterilization" and added "spaying and neutering", and after "animal care and facility fund", added "provided that assistance to individuals and nonprofit organizations shall only be given to individuals who have, or to nonprofit organizations that shall only provide assistance to service recipients who have, a household income that does not exceed two hundred percent of the current federal poverty

level guidelines published by the United States department of health and human services".

Temporary provisions. — Laws 2017, ch. 44, § 14 provided that animal sheltering board members serving as of

July 1, 2018, shall continue to serve on the animal sheltering committee for a period of at least one year.

61-14-8. Application for license. (Repealed effective July 1, 2024.)

A. Any person desiring a license to practice veterinary medicine in this state may make written application to the board showing that the person:

- (1) has reached the age of majority; and
- (2) is a person of good moral character.

The application shall contain other information and proof as required by regulation of the board and, except as provided in Section 61-1-34 NMSA 1978, shall be accompanied by an application fee established by the board.

B. If the board finds that the applicant possesses the proper qualifications, it shall admit the applicant to the next examination. If an applicant is found unqualified to take the examination, the board shall immediately notify the applicant in writing of its findings and the grounds for them.

History: 1953 Comp., § 67-11-16, enacted by Laws 1967, ch. 62, § 5; 1973, ch. 40, § 1; 1993, ch. 183, § 5; 2020, ch. 6, § 38.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

Cross references. — For the Uniform Licensing Act, see 61-1-1 NMSA 1978 et seq.

For age of majority, see 28-6-1 NMSA 1978.

For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, Paragraph A(2), after "the board and", added "except as provided in Section 61-1-34 NMSA 1978".

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "person" for "veterinarian" in the introductory paragraph, deleted former Paragraph (2),

which read "is a citizen of the United States or an applicant for citizenship; and", and redesignated former Paragraph (3) as Paragraph (2), making a related grammatical change; and in Subsection B, deleted "or, if the applicant is eligible for license without examination, it shall forthwith grant him a license" at the end of the first sentence and deleted "or to receive a license without examination" preceding "the board" in the second sentence.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 3.

Failure to procure license as affecting recovery for services, 30 A.L.R. 900, 42 A.L.R. 1226, 118 A.L.R. 646.

Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20, 23.

61-14-9. Examination. (Repealed effective July 1, 2024.)

The board shall conduct at least one examination each calendar year following public notice of the time and place. Examinations shall be prepared and conducted under regulations promulgated by the board, and shall be designed to test the applicant's knowledge and proficiency in the practice of veterinary medicine. Immediately after the results of each examination are determined, the board shall notify each applicant of the results of his examination and issue a license to those applicants successfully completing it. Any applicant failing an examination shall be admitted to any subsequent examination upon payment of another application fee.

History: 1953 Comp., § 67-11-17, enacted by Laws 1967, ch. 62, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 4.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 20, 23.

61-14-10. License by endorsement. (Repealed effective July 1, 2024.)

A. Pursuant to its regulations, the board may issue a license without written examination, except an examination on state laws and other state and federal regulations related to the practice

of veterinary medicine, to a qualified applicant who furnishes satisfactory evidence that the applicant is a veterinarian and has, for the five years next prior to filing the application, been a practicing veterinarian and licensed in a state, territory or district of the United States having license requirements at the time the applicant was first licensed that were substantially equivalent to the requirements of the Veterinary Practice Act.

B. Pursuant to its regulations, the board may issue, with examination, a limited practice license in veterinary medicine, which limited practice license shall describe adequately that area of veterinary medicine that the licensee is entitled to practice.

C. At its discretion, the board may examine, orally or practically, any person qualifying for a license under this section.

D. The board may issue without examination a temporary permit to practice veterinary medicine to:

(1) a qualified applicant for a license pending examination, provided the applicant is a graduate veterinarian and employed by and working under the direct supervision of a licensed veterinarian; provided that:

(a) the temporary permit shall expire the day after the notice of results of the first examination given after the permit is issued;

(b) a qualified applicant for a license pending examination may, at the board's discretion, be exempted from the requirement of working under the direct supervision of a licensed veterinarian, provided the applicant submits a written request for such exemption; and

(c) no additional temporary permit shall be issued to an applicant who has failed the required components of the New Mexico examination in this or any other state or any other territory, district or commonwealth of the United States; or

(2) a nonresident veterinarian validly licensed and in good standing with the licensing authority in another state, territory, district or commonwealth of the United States; provided that:

(a) except as otherwise provided in Subparagraph (b) of this paragraph, the temporary permit shall be issued for a period lasting no more than sixty days, not more than one permit shall be issued to the nonresident veterinarian during a calendar year and no more than two sixty-day, temporary permits shall be issued to the nonresident veterinarian; and

(b) if a nonresident veterinarian is employed by or has a contract with the state, a municipality or a county to provide veterinary services at a nationally accredited zoo or aquarium located in New Mexico, the temporary permit shall be issued for a period lasting no more than six months and no more than two consecutive six-month, temporary permits shall be issued to any one individual.

E. A temporary permit to practice veterinary medicine may be summarily revoked by a majority vote of the board without a hearing.

History: 1953 Comp., § 67-11-18, enacted by Laws 1967, ch. 62, § 7; 1975, ch. 96, § 6; 1993, ch. 163, § 6; 1995, ch. 154, § 3; 2022, ch. 8, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 2022 amendment, effective May 18, 2022, authorized the board of veterinary medicine to issue temporary permits to practice veterinary medicine to certain nonresident veterinarians employed by or contracted with the state, a municipality or a county to provide veterinary services at nationally accredited zoos or aquariums located in New Mexico; and in Subsection D, Subparagraph D(2)(a), added "except as otherwise provided in Subparagraph (b) of this paragraph", and after "no more than two", added "sixty-day", and added Subparagraph D(2)(b).

The 1995 amendment, effective June 16, 1995, deleted "the privilege of obtaining" following "examination" in Subsection D, inserted "a graduate veterinarian and" following "applicant is" in Paragraph (1) of Subsection D, added Subparagraph D(1)(b), redesignated former Subparagraph D(1)(b) as Subparagraph D(1)(c), and made a minor stylistic change in Subparagraph D(1)(a).

The 1993 amendment, effective June 18, 1993, rewrote the section heading, which formerly read "License without examination"; in Subsection A, added "Pursuant to its regulations" at the beginning, inserted "except an examination on state laws and other state and federal regulations related to the practice of veterinary medicine", and deleted former Paragraph (2), which read "within the three years next prior to filing his application, successfully completed the examination conducted by the national board of veterinary examiners"; in Subsections A and B, made minor stylistic changes; and added Subsections D and E.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 4.

Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20, 23.

61-14-11. Certification as veterinary technician; annual registration of employment; employment change; fees. (Repealed effective July 1, 2024.)

A. No person shall perform or attempt to perform as a veterinary technician without first applying for and obtaining a certificate of qualification from the board of veterinary medicine as a veterinary technician and having his employment registered in accordance with board regulation.

B. A veterinary technician shall perform only those acts and duties assigned him by a supervising licensed veterinarian that are within the scope of practice of such supervising veterinarian, not to include diagnosis, prescription or surgery.

C. An applicant for a certificate of qualification as a veterinary technician shall complete application forms as supplied by the board of veterinary medicine, successfully complete an examination conducted by the board and pay a fee to defray the cost of processing the application and administering the examination, which fee is not returnable.

D. Each certified veterinary technician shall annually register his employment with the board of veterinary medicine, stating his name and current address, the name and office address of both his employer and supervising licensed veterinarian and such additional information as the board deems necessary. Upon any change of employment as a veterinary technician, such registration shall automatically be void. Each annual registration or registration of new employment shall be accompanied by fees set by the board for use by the board in defraying the cost of administering the Veterinary Practice Act.

History: 1953 Comp., § 67-11-18.1, enacted by Laws 1975, ch. 96, § 7; 1993, ch. 163, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 1993 amendment, effective June 18, 1993, inserted "of veterinary medicine" following "board" in Subsections A and C and in the first sentence of Subsection D; deleted "of fifty dollars (\$50.00)" following "pay a fee" in Subsection C; deleted the former second sentence of

Subsection C, pertaining to enrollment on a roster of veterinary technicians; and deleted "in amounts not to exceed twenty dollars (\$20.00)" following "by the board" in the second sentence of Subsection D.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

61-14-12. License, permit and registration renewal. (Repealed effective July 1, 2024.)

A. All licenses, permits and registrations issued pursuant to the Veterinary Practice Act may be renewed by payment of the renewal fee, except as provided in Section 61-1-34 NMSA 1978, and submission of proof of completion of continuing education requirements as established by regulation of the board. Not later than thirty days prior to expiration, the board shall mail a notice to each licensed veterinarian, registered veterinary technician and holder of an artificial insemination or pregnancy diagnosis permit that the license, registration or permit will expire and provide a renewal application form.

B. Except as provided in Subsections C and D of this section, a person may reinstate an expired license, registration or permit, issued pursuant to the Veterinary Practice Act, within five years of its expiration by making application to the board for renewal and paying the current renewal fee along with all delinquent renewal fees and late fees. After five years have elapsed since the date of expiration, a license, registration or permit may not be renewed and the holder shall apply for a new license, registration or permit and take the required examination.

C. A person shall not have the person's license, issued pursuant to the Veterinary Practice Act, reinstated in New Mexico if, during the time period in which the person's license lapsed, the person's license in another state or jurisdiction was suspended or revoked for reasons for which the license would have been subject to suspension or revocation in New Mexico.

D. A person who, during the time period in which the person's license, issued pursuant to the Veterinary Practice Act, lapsed, was subject to any disciplinary proceedings resulting in action less than suspension or revocation in another state or jurisdiction, may, at the discretion of the board,

have the person's license to practice in New Mexico reinstated on a probationary status for up to two years. Upon request by the applicant for reinstatement, the board shall determine under what circumstances the probationary status shall be continued or removed or the application for reinstatement denied.

E. The board may provide by regulation for waiver of payment of any renewal fee of a licensed veterinarian during any period when the veterinarian is on active duty with any branch of the armed services of the United States for the duration of a national emergency.

History: 1953 Comp., § 67-11-19, enacted by Laws 1967, ch. 62, § 8; 1975, ch. 96, § 8; 1977, ch. 167, § 2; 1993, ch. 163, § 8; 1995, ch. 154, § 4; 2017, ch. 44, § 4; 2020, ch. 6, § 39.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the license renewal fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, after "renewal fee", added "except as provided in Section 61-1-34 NMSA 1978".

The 2017 amendment, effective July 1, 2018, made technical changes to the section; in Subsection A, after "licenses, permits and registrations", added "issued pursuant to the Veterinary Practice Act"; in Subsection B, after "license, registration or permit", added "issued pursuant to the Veterinary Practice Act"; in Subsection C, after "the person's license", added "issued pursuant to the Veterinary Practice Act", after "during the time period", deleted "his" and added "in which the person's", after "license", deleted "to practice in New Mexico was", and after "lapsed", deleted "his" and added "the person's"; in Subsection D,

after "time period", deleted "his" and added "in which the person's", after "license", deleted "to practice in New Mexico was" and added "issued pursuant to the Veterinary Practice Act", and after "at the discretion of the board, have", deleted "his" and added "the person's"; and in Subsection E, after "any period when", deleted "he" and added "the veterinarian".

The 1995 amendment, effective June 16, 1995, in Subsection B, added "Except as provided in Subsections C and D of this section" at the beginning, inserted "and late fees" following "renewal fees", and substituted "shall" for "must" in the last sentence; added Subsections C and D; and redesignated former Subsection C as Subsection E.

The 1993 amendment, effective June 18, 1993, in Subsection A, deleted "expire on December 31 each year and" following "registrations" and "annual" preceding "renewal" in the first sentence and substituted "thirty days prior to expiration" for "December 1 each year", deleted "on December 31" following "expire", and made stylistic changes in the second sentence; and in Subsection C, substituted "for the duration of a national emergency" for "not to exceed three years or for the duration of a national emergency, whichever is longer" at the end.

61-14-13. Denial, suspension or revocation of license. (Repealed effective July 1, 2024.)

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, suspend for a definite period or revoke a license, certificate or permit held or applied for under the Veterinary Practice Act, or may reprimand, place on probation, enter a stipulation with or impose an administrative penalty in an amount not to exceed five thousand dollars (\$5,000) on a holder of a license, certificate or permit, upon a finding by the board that the licensee, certificate or permit holder, or applicant:

- (1) has committed an act of fraud, misrepresentation or deception in obtaining a license or permit;
- (2) has been adjudicated insane or manifestly incapacitated;
- (3) has used advertising or solicitation that is false, misleading or is otherwise deemed unprofessional under rules promulgated by the board;
- (4) has been convicted of a felony or other crime involving moral turpitude;
- (5) is guilty of dishonesty, incompetence, gross negligence or other malpractice in the practice of veterinary medicine;
- (6) has a professional association with or employs any person practicing veterinary medicine unlawfully;
- (7) is guilty of fraud or dishonesty in the application or reporting of any test for disease in animals;
- (8) has failed to maintain his professional premises and equipment in a clean and sanitary condition in compliance with facility permit rules promulgated by the board;
- (9) is guilty of habitual or excessive use of intoxicants or drugs;
- (10) is guilty of cruelty to animals;
- (11) has had his license to practice veterinary medicine revoked by another state, territory or district of the United States on grounds other than nonpayment of license or permit fees;

(12) is guilty of unprofessional conduct by violation of a rule promulgated by the board pursuant to provisions of the Veterinary Practice Act;

(13) has failed to perform as a veterinary technician under the direct supervision of a licensed veterinarian;

(14) has failed as a licensed veterinarian to reasonably exercise direct supervision with respect to a veterinary technician;

(15) is guilty of aiding or abetting the practice of veterinary medicine by a person not licensed, certified or permitted by the board;

(16) has used any controlled drug or substance on any animal for the purpose of illegally influencing the outcome of a competitive event;

(17) has willfully or negligently administered a drug or substance that will adulterate meat, milk, poultry, fish or eggs;

(18) has failed to maintain required logs and records;

(19) has used a prescription or has sold any prescription drug or prescribed extra-label use of any over-the-counter drug in the absence of a valid veterinarian-client-patient relationship;

(20) has failed to report, as required by law, or has made a false report of any contagious or infectious disease;

(21) has engaged in an unfair or deceptive practice; or

(22) has engaged in the practice of veterinary medicine on any animal or group of animals in the absence of a valid veterinarian-client-patient relationship.

B. Disciplinary proceedings may be instituted by sworn complaint by any person and shall conform with the provisions of the Uniform Licensing Act.

C. Any person whose license, certificate or permit is suspended or revoked by the board pursuant to provisions of this section may, at the discretion of the board, be relicensed or reinstated by the board at any time without examination upon written application to the board showing cause to justify relicensing or reinstatement.

History: 1953 Comp., § 67-11-20, enacted by Laws 1967, ch. 62, § 9; 1975, ch. 96, § 9; 1993, ch. 163, § 9; 1995, ch. 154, § 5; 1998, ch. 55, § 75; 1999, ch. 243, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

Cross references. — For appeal of final decisions by agencies to district court, see 39-3-1.1 NMSA 1978.

The 1999 amendment, effective June 18, 1999, rewrote the introductory language to Subsection A, which formerly read "The board may place a licensee on probation; impose on a licensee an administrative penalty in an amount not to exceed two thousand five hundred dollars (\$2,500); reprimand a licensee; deny, suspend for a definite period or revoke a license, certificate or permit of a licensee; or take any other reasonable action as established by the board if the board determines after receiving a complaint and providing notice and a hearing pursuant to the Uniform Licensing Act that a licensee"; added Subsections A(22) and B; and redesignated former Subsection B as Subsection C.

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

The 1995 amendment, effective June 16, 1995, inserted "facility permit" preceding "regulations" in Paragraph (8) of Subsection A, and substituted "pursuant to provisions of" for "under" in Paragraph (12) of Subsection A and in Subsection B.

The 1993 amendment, effective June 18, 1993, in Subsection A, rewrote the introductory paragraph and Paragraph (9); added "or manifest incapacity" at the end of Paragraph (2); inserted "dishonesty" at the beginning of Paragraph (5); inserted "or permit" near the end of Paragraph (11); and added Paragraphs (13) to (21); in Subsection B, inserted "certificate or permit" near the beginning;

and deleted former Subsection C, which listed the grounds for denial or suspension of registration or denial or revocation of any certificate of qualification.

ANNOTATIONS

Section is not too vague to enable establishment by board of reasonable guidelines for revocation or suspension of license. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Board need not specify acts deemed unprofessional by rule or regulation, as these acts usually reflect general standards of ethics and practice which are adhered to in a profession. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Presence at hearing. — Absent evidence of prejudice or bias on part of board, fact that one member was not present for part of suspension hearing, while he was attempting to locate a witness, was excusable. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Ordinary negligence. — The board of veterinary medicine cannot sanction its licensees for acts of ordinary negligence committed in a single episode of treatment. The phrase "other malpractice" does not include a single episode of ordinary negligence. *N.M. Bd. of Veterinary Med. v. Riegger*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'g in part, rev'g in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 5.

Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 35 to 42, 53 to 57.

61-14-14. Exemptions. (Repealed effective July 1, 2024.)

Provisions of the Veterinary Practice Act do not apply to:

- A. employees of federal or state governments performing official duties;
- B. regular students in a veterinary school performing duties or actions assigned by an instructor or working under direct supervision of a licensed veterinarian during a school vacation period;
- C. reciprocal aid of neighbors in performing routine accepted livestock management practices;
- D. a veterinarian licensed in a foreign jurisdiction consulting with a licensed veterinarian;
- E. a merchant or manufacturer selling at the merchant's or manufacturer's regular place of business any medicine, feed, appliance or other product used in the prevention or treatment of animal disease;
- F. the owner of an animal and the owner's consignees and their employees while performing routine accepted livestock management practices in the care of animals belonging to the owner;
- G. a member of the faculty of a veterinary school performing the member's regular functions or a person lecturing or giving instruction or demonstration at a veterinary school or in connection with a continuing education course or seminar for licensed veterinarians, veterinary technicians or persons holding or training for valid permits for artificial insemination or diagnosing pregnancy;
- H. a person selling or applying any pesticide, insecticide or herbicide; or
- I. a person engaging in bona fide scientific research that reasonably requires experimentation involving animals.

History: 1953 Comp., § 67-11-21, enacted by Laws 1967, ch. 62, § 10; 1975, ch. 96, § 10; 1993, ch. 163, § 10; 1999, ch. 243, § 3; 2017, ch. 44, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 2017 amendment, effective July 1, 2018, removed employees of local governments from the exemption provisions of the Veterinary Practice Act; in Subsection A, after "employees of federal", added "or", and after "state", deleted "or local"; in Subsection D, deleted "any" and added "a"; in Subsection E, deleted "any" and added "a", and after "selling at", deleted "his" and added "the merchant's or manufacturer's"; in Subsection F, after "owner of the animal", deleted "his" and added "and the owner's"; and in Subsection G, after "veterinary school performing", deleted "his" and added "the member's".

The 1999 amendment, effective June 18, 1999, deleted former Subsections J and K, relating to persons who artificially inseminate or diagnose pregnancy, and acts performed by veterinary technicians under the direct supervision of a licensed or license-exempt veterinarian, respectively.

The 1993 amendment, effective June 18, 1993, substituted "a valid permit issued by the board" for "written

consent of the New Mexico livestock board" at the end of Subsection J; substituted "under the direct supervision of a licensed or license-exempt" for "at the direction of and under the supervision of a licensed" in the introductory paragraph of Subsection K; deleted "at the direction of and under the supervision of a licensed veterinarian" following "performed" in Paragraph (2) of Subsection K; and made minor stylistic changes in Subsections I and K.

ANNOTATIONS

State personnel board may not require New Mexico license for veterinarians in addition to what the veterinarian statutes indicate as acceptable qualifications; however, the board can require qualifications, other than licensure in the state, of its professional employees. 1974 Op. Att'y Gen. No. 74-20.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and other Health-Care Providers § 13.

61-14-15. Persons previously licensed. (Repealed effective July 1, 2024.)

The board shall issue a license to any person holding a valid license to practice veterinary medicine in this state on the effective date of the Veterinary Practice Act.

History: 1953 Comp., § 67-11-22, enacted by Laws 1967, ch. 62, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

61-14-16. Responsibility. (Repealed effective July 1, 2024.)

Every veterinarian using, supervising or employing a registered veterinary technician shall be individually responsible and liable for the performance of the acts and omissions delegated to the

veterinary technician. Nothing in this section shall be construed to relieve the veterinary technician of any responsibility and liability for any of his own acts and omissions.

History: 1953 Comp., § 67-11-22.1, enacted by Laws 1975, ch. 96, § 11; 1995, ch. 154, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 1995 amendment, effective June 16, 1995, deleted the former last sentence which read "No veterinarian may have under his supervision more than two currently registered veterinarian technicians."

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 8.

Veterinarian's liability for malpractice, 71 A.L.R.4th 811.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 83 to 86.

61-14-17. Inoculation records; confidentiality. (Repealed effective July 1, 2024.)

Animal inoculation records maintained by any state or local public agency may be used only in protecting the public health and welfare or by any other government agency and are not public records open to inspection or duplication. Upon request, the agency shall verify, or deny, as the case may be, that the records reflect that a particular animal has received inoculations within the next preceding twelve months.

History: 1978 Comp., § 61-14-17, enacted by Laws 1995, ch. 154, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

Repeals. — Laws 1993, ch. 163, § 13 repealed former 61-14-17 NMSA 1978, as enacted by Laws 1967, ch. 62, § 12, concerning qualifications for permits, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

61-14-18. Practicing without license; penalty. (Repealed effective July 1, 2024.)

A. It is a misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978 for a person to practice veterinary medicine without complying with the provisions of the Veterinary Practice Act and without being the holder of a license entitling the person to practice veterinary medicine in New Mexico.

B. If the board finds that a person or entity has practiced veterinary medicine without a license, the board may:

- (1) impose a fine not to exceed five thousand dollars (\$5,000);
- (2) assess the person or entity for administrative costs, including investigative costs and the cost of conducting a hearing; and
- (3) impose any other sanction as provided pursuant to board rules.

History: 1953 Comp., § 67-11-24, enacted by Laws 1967, ch. 62, § 13; 1999, ch. 243, § 4; 2017, ch. 44, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 2017 amendment, effective July 1, 2018, provided additional penalties for practicing veterinary medicine without a license; added new subsection designation "A."; in Subsection A, after "misdemeanor", added "punishable

pursuant to Section 31-19-1 NMSA 1978", after "for", deleted "any" and added "a", and after "a license entitling", deleted "him" and added "the person"; and added Subsection B.

The 1999 amendment, effective June 18, 1999, rewrote the section which formerly read: "It is a misdemeanor for any person to engage in the practice of veterinary medicine in this state unless he is a licensed veterinarian".

61-14-19. Injunction. (Repealed effective July 1, 2024.)

The board or any person may bring an action in the district court to enjoin any person who is not a licensed veterinarian from engaging in the practice of veterinary medicine. If the court finds that the defendant is violating or threatening to violate the Veterinary Practice Act, it shall enter an order restraining him from the violation. Any person so enjoined who violates the injunction may be punished for contempt of court. This remedy by injunction shall be in addition to any remedy provided for criminal prosecution of the offender.

History: 1953 Comp., § 67-11-25, enacted by Laws 1967, ch. 62, § 14; 1999, ch. 243, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-14-20 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted "violation" for "violating without regard to any

criminal provisions of the Veterinary Practice Act" in the second sentence, and added the last two sentences.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 6.

61-14-20. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The board of veterinary medicine is terminated on July 1, 2023 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 14 and Chapter 77, Article 1B NMSA 1978 until July 1, 2024. Effective July 1, 2024, Chapter 61, Article 14 and Chapter 77, Article 1B NMSA 1978 are repealed.

History: 1978 Comp., § 61-14-20, enacted by Laws 1979, ch. 76, § 2; 1981, ch. 241, § 27; 1985, ch. 87, § 12; 1991, ch. 189, § 22; 1993, ch. 163, § 12; 1997, ch. 46, § 16; 2005, ch. 208, § 10; 2011, ch. 30, § 3; 2017, ch. 44, § 7.

The 2017 amendment, effective July 1, 2017, changed "July 1, 2017" to "July 1, 2023", changed "July 1, 2018" to "July 1, 2024", and added "and Chapter 77, Article 1B".

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences.

The 1993 amendment, effective June 18, 1993, substituted "medicine" for "examiners" in the first sentence and made a minor stylistic change in the second sentence.

The 1991 amendment, effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

ARTICLE 14A

Acupuncture and Oriental Medicine Practice

Sec.

- 61-14A-1. Short title. (Repealed effective July 1, 2024.)
- 61-14A-2. Purpose. (Repealed effective July 1, 2024.)
- 61-14A-3. Definitions. (Repealed effective July 1, 2024.)
- 61-14A-4. License required. (Repealed effective July 1, 2024.)
- 61-14A-4.1. Certified auricular detoxification specialists, supervisors and training programs; fees. (Repealed effective July 1, 2024.)
- 61-14A-5. Title. (Repealed effective July 1, 2024.)
- 61-14A-6. Exemptions. (Repealed effective July 1, 2024.)
- 61-14A-7. Board created; appointment; officers; compensation. (Repealed effective July 1, 2024.)
- 61-14A-8. Board; powers. (Repealed effective July 1, 2024.)
- 61-14A-8.1. Expanded practice and prescriptive authority; certifications. (Repealed effective July 1, 2024.)
- 61-14A-9. Board; duties. (Repealed effective July 1, 2024.)
- 61-14A-10. Requirements for licensing. (Repealed effective July 1, 2024.)
- 61-14A-11. Examinations. (Repealed effective July 1, 2024.)
- 61-14A-12. Requirements for temporary licensing. (Repealed effective July 1, 2024.)

Sec.

- 61-14A-13. Requirements for expedited licensing. (Repealed effective July 1, 2024.)
- 61-14A-14. Approval of educational programs. (Repealed effective July 1, 2024.)
- 61-14A-14.1. Students and externs; supervised practice. (Repealed effective July 1, 2024.)
- 61-14A-15. License renewal. (Repealed effective July 1, 2024.)
- 61-14A-16. Fees. (Repealed effective July 1, 2024.)
- 61-14A-17. Disciplinary proceedings; judicial review; application of Uniform Licensing Act. (Repealed effective July 1, 2024.)
- 61-14A-18. Fund created. (Repealed effective July 1, 2024.)
- 61-14A-19. Penalties. (Repealed effective July 1, 2024.)
- 61-14A-20. Criminal Offender Employment Act. (Repealed effective July 1, 2024.)
- 61-14A-21. Licensed acupuncture practitioner; license valid under new act. (Repealed effective July 1, 2024.)
- 61-14A-22. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

61-14A-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 14A NMSA 1978 may be cited as the "Acupuncture and Oriental Medicine Practice Act".

History: 1978 Comp., § 61-14A-1, enacted by Laws 1993, ch. 158, § 9; 1997, ch. 240, § 2.

Repeals and reenactments. — Laws 1993, ch. 158, § 9 repeals former 61-14A-1 NMSA 1978, as enacted by Laws 1981, ch. 62, § 1, and enacted the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

For freedom of choice in selection of doctor of oriental medicine, see 59A-32-22 NMSA 1978.

For prohibition of discrimination against oriental medical doctors, see 59A-47-28.2 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "Chapter 61, Article 14A" for "Sections 61-14A-1 through 61-14A-21".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Regulation of practice of acupuncture, 17 A.L.R.4th 964.

61-14A-2. Purpose. (Repealed effective July 1, 2024.)

In the interest of the public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of acupuncture and oriental medicine, it is necessary to provide laws and regulations to govern the practice of acupuncture and oriental medicine. The primary responsibility and obligation of the board of acupuncture and oriental medicine is to protect the public.

History: 1978 Comp., § 61-14A-2, enacted by Laws 1993, ch. 158, § 10.

Repeals and reenactments. — Laws 1993, ch. 158, § 10 repealed former 61-14A-2 NMSA 1978, as amended by

Laws 1989, ch. 96, § 4, defining certain terms, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

61-14A-3. Definitions. (Repealed effective July 1, 2024.)

As used in the Acupuncture and Oriental Medicine Practice Act:

A. "acupuncture" means the surgical use of needles inserted into and removed from the body and the use of other devices, modalities and procedures at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or other condition by controlling and regulating the flow and balance of energy and function to restore and maintain health;

B. "board" means the board of acupuncture and oriental medicine;

C. "doctor of oriental medicine" means a person licensed as a physician to practice acupuncture and oriental medicine with the ability to practice independently, serve as a primary care provider and as necessary collaborate with other health care providers;

D. "moxibustion" means the use of heat on or above specific locations or on acupuncture needles at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or other condition;

E. "oriental medicine" means the distinct system of primary health care that uses all allied techniques of oriental medicine, both traditional and modern, to diagnose, treat and prescribe for the prevention, cure or correction of disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy, form and function to restore and maintain health;

F. "primary care provider" means a health care practitioner acting within the scope of the health care practitioner's license who provides the first level of basic or general health care for a person's health needs, including diagnostic and treatment services, initiates referrals to other health care practitioners and maintains the continuity of care when appropriate;

G. "techniques of oriental medicine" means:

(1) the diagnostic and treatment techniques used in oriental medicine that include diagnostic procedures; acupuncture; moxibustion; manual therapy, also known as tui na; other physical medicine modalities and therapeutic procedures; breathing and exercise techniques; and dietary, nutritional and lifestyle counseling;

(2) the prescribing, administering, combining and providing of herbal medicines, homeopathic medicines, vitamins, minerals, enzymes, glandular products, natural substances, natural medicines, protomorphogens, live cell products, gerovital, amino acids, dietary and nutritional supplements, cosmetics as they are defined in the New Mexico Drug, Device and Cosmetic Act

[Chapter 26, Article 1 NMSA 1978] and nonprescription drugs as they are defined in the Pharmacy Act [Chapter 61, Article 11 NMSA 1978]; and

(3) the prescribing, administering and providing of devices, restricted devices and prescription devices, as those devices are defined in the New Mexico Drug, Device and Cosmetic Act, if the board determines by rule that the devices are necessary in the practice of oriental medicine and if the prescribing doctor of oriental medicine has fulfilled requirements for prescriptive authority in accordance with rules promulgated by the board for the devices enumerated in this paragraph; and

H. "tutor" means a doctor of oriental medicine with at least ten years of clinical experience who is a teacher of acupuncture and oriental medicine.

History: 1978 Comp., § 61-14A-3, enacted by Laws 1993, ch. 158, § 11; 1997, ch. 240, § 3; 2000, ch. 53, § 2; 2001, ch. 266, § 1; 2007, ch. 276, § 1.

Repeals and reenactments. — Laws 1993, ch. 158, § 11 repealed former 61-14A-3 NMSA 1978, as enacted by Laws 1981, ch. 62, § 3, relating to the requirement of a license, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2007 amendment, effective June 15, 2007, defined "techniques of oriental medicine" to include prescribing, administering, combining or providing medicines, including natural medicines and cosmetics as defined in the New Mexico Drug, Device and Cosmetic Act and nonprescription drugs as defined in the Pharmacy Act and the prescribing, administering and providing devices as defined in the New Mexico Drug, Device and Cosmetic Act.

The 2001 amendment, effective July 1, 2001, in Subsection F, substituted "health care practitioner" for "health care professional"; and inserted "initiates referrals to other health care practitioners and maintains the continuity of care when appropriate" at the end of the subsection.

The 2000 amendment, effective May 17, 2000, in Subsection A, inserted "surgical" and deleted "human" preceding "body"; substituted "function" for "functioning of the person" in Subsections A and E; deleted Subsection C, which read "department" means the regulation and licensing department" and redesignated the remaining subsections accordingly; substituted "a person's health" for "an individual's health" in Subsection F; inserted

"natural substances, protomorphogens, live cell products, gerovital" in Subsection G(2); inserted "biological products, including" in the beginning of Subsection G(4); in Subsection G(5), inserted "or controlled substances", "or the Controlled Substances Act", and "extended or expanded" in the introductory paragraph; added Subsection G(5)(d) through (g) and (i), deleted former G(5)(e) which read "topical application of naturally occurring hormones" and redesignated the remaining subsections accordingly; added "or controlled substances; and" to the end of Subsection G(5)(j); and added Subsection H.

The 1997 amendment, effective June 20, 1997, in Subsection A, inserted "and removed from" following "inserted into" and "devices" following "other" near the beginning, rewrote Subsection D, deleted "as defined in Subsection G of this section" following "prescribe" in Subsection F, added Subsection G and redesignated the following subsection accordingly, in Subsection H designated the existing language as Paragraphs H(1) and H(2), in Paragraph H(1), deleted "but are not limited to" following "include" near the beginning, and inserted "other physical medicine modalities and therapeutic procedures" following the first semicolon, rewrote the language in Paragraph H(2), and added Paragraphs H(3) through H(5), and made minor stylistic changes.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 3, 42.

61-14A-4. License required. (Repealed effective July 1, 2024.)

Unless licensed as a doctor of oriental medicine pursuant to the Acupuncture and Oriental Medicine Practice Act, no person shall:

- A. practice acupuncture or oriental medicine;
- B. use the title or represent himself as a licensed doctor of oriental medicine or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a doctor of oriental medicine; or
- C. advertise, hold out to the public or represent in any manner that he is authorized to practice acupuncture and oriental medicine.

History: 1978 Comp., § 61-14A-4, enacted by Laws 1993, ch. 158, § 12.

Repeals and reenactments. — Laws 1993, ch. 158, § 12 repealed former 61-14A-4 NMSA 1978, as enacted by Laws 1981, ch. 62, § 4, relating to exemptions, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 26 to 31, 132.

61-14A-4.1. Certified auricular detoxification specialists, supervisors and training programs; fees. (Repealed effective July 1, 2024.)

A. A person who is not a doctor of oriental medicine or who is not a person certified as an auricular detoxification specialist pursuant to the Acupuncture and Oriental Medicine Practice Act shall not:

- (1) practice auricular acupuncture for the treatment of alcoholism, substance abuse or chemical dependency;
- (2) use the title of or represent as a certified auricular detoxification specialist or use any other title, abbreviation, letters, figures, signs or devices that indicate that the person is certified to practice as an auricular detoxification specialist; or
- (3) advertise, hold out to the public or represent in any manner that the person is authorized to practice auricular detoxification.

B. The board shall issue an auricular detoxification specialist certification to a person who has paid an application fee to the board and has successfully completed all board requirements. The board shall adopt rules that require an applicant to:

- (1) successfully complete the national acupuncture detoxification association training or equivalent training approved by the board that shall include clean needle technique training;
- (2) demonstrate experience in treatment, disease prevention, harm reduction and counseling of people suffering from alcoholism, substance abuse or chemical dependency or become employed by a substance abuse treatment program;
- (3) complete a board-approved training program that will include examinations on clean needle technique, jurisprudence and other skills required by the board; and
- (4) demonstrate a record free of convictions for drug- or alcohol-related offenses for at least two consecutive years before the person applied to the board for certification.

C. A certified auricular detoxification specialist is authorized to perform auricular acupuncture and the application to the ear of simple board-approved devices that do not penetrate the skin for the purpose of treating and preventing alcoholism, substance abuse or chemical dependency. The specialist shall use the five auricular point national acupuncture detoxification procedure or auricular procedures approved or established by rule of the board and shall only treat or prevent alcoholism, substance abuse or chemical dependency within a board-approved program that demonstrates experience in disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency.

D. A person certified pursuant to this section shall use the title "certified auricular detoxification specialist" or "C.A.D.S." for the purpose of advertising auricular acupuncture services to the public.

E. A certified auricular detoxification specialist shall apply with the board to renew the certification. The board shall for one year renew the certification of an applicant who pays a renewal fee and completes the requirements established by rule of the board. An applicant who does not apply for renewal before the last date that the certification is valid may be required to pay a late fee pursuant to a rule of the board. The board shall deem a certification for which a renewal has not been applied within sixty days of that date as expired and an applicant that seeks valid certification shall apply with the board for new certification. The board shall by rule require an applicant for renewal of the certification to demonstrate a record free of convictions for drug- or alcohol-related offenses for a minimum of one year prior to application for renewal with the board.

F. A certified auricular detoxification specialist shall practice under the supervision of a licensed doctor of oriental medicine registered with the board as an auricular detoxification specialist supervisor. A supervising doctor of oriental medicine shall be accessible for consultation directly or by telephone to a practicing auricular detoxification specialist. The supervising doctor of oriental medicine shall not supervise more specialists than permitted by board rule. Supervision requirements shall be provided by rule of the board.

G. A doctor of oriental medicine who supervises a certified auricular detoxification specialist shall apply for registration with the board. The board shall issue an auricular detoxification specialist supervisor registration to a doctor of oriental medicine who fulfills board requirements. The board shall by rule require an applicant for registration to list the certified auricular detoxification

specialists that will be supervised, pay an application fee for registration and demonstrate clinical experience in treating or counseling people suffering from alcoholism, substance abuse or chemical dependency.

H. A training program that educates auricular detoxification specialists for certification shall apply for approval by the board. The board shall approve a training program that fulfills the board requirements established by rule and that pays an application fee. The approval shall be valid until July 31 following the initial approval.

I. A training program that is approved by the board to provide training for certification of auricular detoxification specialists shall apply to renew the approval with the board. The board shall renew the approval of a program that fulfills board requirements established by rule, and the renewal shall be valid for one year. An applicant who does not renew before the last date that the renewed approval is valid shall pay a late fee. The board shall deem a program approval that is not renewed within sixty days of that date as expired and a program that seeks board approval shall apply with the board for new approval.

J. The board shall impose the following fees:

(1) an application fee not to exceed one hundred fifty dollars (\$150) for auricular detoxification specialist certification;

(2) a fee not to exceed seventy-five dollars (\$75.00) for renewal of an auricular detoxification specialist certification;

(3) an application fee not to exceed two hundred dollars (\$200) for registration of a certified auricular detoxification specialist supervisor;

(4) an application fee not to exceed two hundred dollars (\$200) for the approval of an auricular detoxification specialist training program;

(5) a fee not to exceed one hundred fifty dollars (\$150) for the renewal of the approval of an auricular detoxification training specialist training program; and

(6) a late fee not to exceed fifty dollars (\$50.00) for applications for renewal filed after the last valid date of a registration, certification, approval or renewal issued pursuant to this section.

K. In accordance with the procedures set forth in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, revoke or suspend any certification, registration, approval or renewal that a person holds or applies for pursuant to this section upon findings by the board that the person violated any rule established by the board.

History: Laws 2003, ch. 193, § 1; 2007, ch. 276, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 2007 amendment, effective June 15, 2007, deleted Subsection H to eliminate the provision for renewal

of registration of doctors of oriental medicine who are registered to supervise certified auricular detoxification specialists and eliminates the fee for renewal of the registration.

61-14A-5. Title. (Repealed effective July 1, 2024.)

Any person licensed pursuant to provisions of the Acupuncture and Oriental Medicine Practice Act, in advertising his services to the public, shall use the title "doctor of oriental medicine" or "D.O.M.". The title "doctor of oriental medicine" or "D.O.M." shall supersede the use of all other titles that include the words "medical doctor" or the initials "M.D." unless the person is a medical doctor licensed pursuant to provisions of the Medical Practice Act [Chapter 61, Article 6 NMSA 1978].

History: 1978 Comp., § 61-14A-5, enacted by Laws 1993, ch. 158, § 13; 1997, ch. 240, § 4.

Repeals and reenactments. — Laws 1993, ch. 158, § 13 repealed former 61-14A-5 NMSA 1978, as enacted by Laws 1981, ch. 62, § 5, relating to criminal offender's character evaluation, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "pursuant to provisions" for "under" in the first sentence, and in the last sentence, deleted "Effective July 1, 1994" at the beginning, and inserted "other" following "all" and "provisions of" following "pursuant to".

61-14A-6. Exemptions. (Repealed effective July 1, 2024.)

A. Nothing in the Acupuncture and Oriental Medicine Practice Act is intended to limit, interfere with or prevent any other class of licensed health care professionals from practicing within the scope of their licenses, but they shall not hold themselves out to the public or any private group or business by using any title or description of services that includes the term acupuncture, acupuncturist or oriental medicine unless they are licensed under the Acupuncture and Oriental Medicine Practice Act.

B. The Acupuncture and Oriental Medicine Practice Act shall not apply to or affect the following practices if the person does not hold himself out as a doctor of oriental medicine or as practicing acupuncture or oriental medicine:

- (1) the administering of gratuitous services in cases of emergency;
- (2) the domestic administering of family remedies;
- (3) the counseling about or the teaching and demonstration of breathing and exercise techniques;
- (4) the counseling or teaching about diet and nutrition;
- (5) the spiritual or lifestyle counseling of a person or spiritual group or the practice of the religious tenets of a church;
- (6) the providing of information about the general usage of herbal medicines, homeopathic medicines, vitamins, minerals, enzymes or glandular or nutritional supplements; or
- (7) the use of needles for diagnostic purposes and the use of needles for the administration of diagnostic or therapeutic substances by licensed health care professionals.

History: 1978 Comp., § 61-14A-6, enacted by Laws 1993, ch. 158, § 14; 1997, ch. 240, § 5; 2000, ch. 53, § 3.

Repeals and reenactments. — Laws 1993, ch. 158, § 14 repealed former 61-14A-6 NMSA 1978, as enacted by Laws 1981, ch. 62, § 6, creating the board and relating to officers and compensation, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2000 amendment, effective May 17, 2000, in Subsection A, substituted "licenses," for "license as defined by each profession's New Mexico licensing statutes" and

substituted "term acupuncture" for "terms acupuncture"; deleted former Subsection B allowing students to practice acupuncture and oriental medicine under supervision, and redesignated former Subsection C as present Subsection B; in present Subsection B, substituted "person" for "individual" in the introductory language, substituted "a person" for "any individual" and substituted "a church" for "any church" in Paragraph (5).

The 1997 amendment, effective June 20, 1997, inserted "approved by the board" near the beginning of Subsection B, substituted "if" for "provided that" in Subsection C, and added Paragraph C(7).

61-14A-7. Board created; appointment; officers; compensation. (Repealed effective July 1, 2024.)

- A. The "board of acupuncture and oriental medicine" is created.
- B. The board is administratively attached to the regulation and licensing department.
- C. The board shall consist of seven members appointed by the governor for terms of three years each. Four members of the board shall be doctors of oriental medicine who have been residents of and practiced acupuncture and oriental medicine in New Mexico for at least five years immediately preceding the date of their appointment. Three members shall be appointed to represent the public and shall not have practiced acupuncture and oriental medicine in this or any other jurisdiction or have any financial interest in the profession regulated. No board member shall be the owner, principal or director of an institute offering educational programs in acupuncture and oriental medicine. No more than one board member may be from each of the following categories:
 - (1) a faculty member at an institute offering educational programs in acupuncture and oriental medicine;
 - (2) a tutor in acupuncture and oriental medicine; or
 - (3) an officer or director in a professional association of acupuncture and oriental medicine.

D. Members of the board shall be appointed by the governor for staggered terms of three years that shall be made in such a manner that the terms of board members expire on July 1. A board

member shall serve until his successor has been appointed and qualified. Vacancies shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

E. A board member shall not serve more than two consecutive full terms, and a board member who fails to attend, after he has received proper notice, three consecutive meetings shall be recommended for removal as a board member unless excused for reasons established by the board.

F. The board shall elect annually from its membership a chairman and other officers as necessary to carry out its duties.

G. The board shall meet at least once each year and at other times deemed necessary. Other meetings may be called by the chairman, a majority of board members or the governor. A simple majority of the board members serving constitutes a quorum of the board.

H. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: 1978 Comp., § 61-14A-7, enacted by Laws 1993, ch. 158, § 15; 2000, ch. 53, § 4.

Repeals and reenactments. — Laws 1993, ch. 158, § 15 repealed former 61-14A-7 NMSA 1978, as enacted by Laws 1981, ch. 62, § 7, relating to powers and duties of the board, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 2000 amendment, effective May 17, 2000, inserted "regulation and licensing" in Subsection B; in Subsection

C, changed the requirements of board members by adding a residency requirement and increasing the years of practice required immediately before appointment, added "No board member shall be the owner, principal, or director of an institute offering educational programs in acupuncture and oriental medicine", and rewrote the distribution of board members; in Subsection D, substituted "A board member" for "When a board member's term has expired, he" and inserted "and qualified".

61-14A-8. Board; powers. (Repealed effective July 1, 2024.)

The board has the power to:

- A. enforce the provisions of the Acupuncture and Oriental Medicine Practice Act;
- B. promulgate, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules necessary for the implementation and enforcement of the provisions of the Acupuncture and Oriental Medicine Practice Act;
- C. adopt a code of ethics;
- D. adopt and use a seal;
- E. inspect facilities of approved educational programs, extern programs and the offices of licensees;
- F. promulgate rules implementing continuing education requirements for the purpose of protecting the health and well-being of the citizens of this state and maintaining and continuing informed professional knowledge and awareness; and
- G. in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978]:
 - (1) issue investigative subpoenas for the purpose of investigating complaints against licensees prior to the issuance of a notice of contemplated action;
 - (2) administer oaths and take testimony on any matters within the board's jurisdiction;
 - (3) conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license; and
 - (4) grant, deny, renew, suspend or revoke licenses to practice acupuncture and oriental medicine or grant, deny, renew, suspend or revoke approvals of educational programs and extern programs for any cause stated in the Acupuncture and Oriental Medicine Practice Act or the rules of the board.

History: 1978 Comp., § 61-14A-8, enacted by Laws 1993, ch. 158, § 16; 2000, ch. 53, § 5; 2003, ch. 408, § 21; 2022, ch. 39, § 59.

Repeals and reenactments. — Laws 1993, ch. 158, § 16 repealed former 61-14A-8 NMSA 1978, as enacted by Laws 1981, ch. 62, § 8, relating to funds and fees, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of acupuncture and oriental medicine is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; in Subsection B, deleted "adopt, publish and file" and added "promulgate", and after "in accordance with", deleted "Uniform Licensing Act and"; and in Subsection G, added "in accordance with the Uniform

Licensing Act", and redesignated former Subsections H through J as Paragraphs G(2) through G(4), respectively, in Paragraph G(3), after "revocation of a license", deleted "in accordance with the Uniform Licensing Act", and in Paragraph G(4), after "extern programs", deleted "in accordance with the provisions of the Uniform Licensing Act".

The 2003 amendment, effective July 1, 2003, deleted "In addition to any authority provided by law" at the beginning of the first paragraph; and deleted former Subsection G, concerning employment of professional and

clerical assistance, and redesignated the subsequent subsections accordingly.

The 2000 amendment, effective May 17, 2000, deleted "and regulations" following "rules" in Subsections B and K, substituted "facilities of approved educational programs, extern programs" for "institutes, tutorships" in Subsection E, substituted "such professional and clerical assistance as necessary to carry out the powers and duties of the board" for "agents and attorneys" in Subsection G, and inserted "or grant, deny, renew, suspend or revoke approvals of educational programs and extern programs" in Subsection K.

61-14A-8.1. Expanded practice and prescriptive authority; certifications. (Repealed effective July 1, 2024.)

A. The board shall issue certifications, as determined by rule of the board, for expanded practice and prescriptive authority only for the substances enumerated in Paragraphs (1) and (2) of Subsection C of this section to a doctor of oriental medicine who has submitted completed forms provided by the board, paid the application fee for certification and submitted proof of successful completion of additional training required by rule of the board. The board shall adopt the rules determined by the board of pharmacy for additional training required for the prescribing, administering, compounding or dispensing of caffeine, procaine, oxygen, epinephrine and bioidentical hormones. The board and the board of pharmacy shall consult as appropriate.

B. The board shall issue certifications in the four expanded practices of basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy.

C. The expanded practice and prescriptive authority shall include:

(1) the prescribing, administering, compounding and dispensing of herbal medicines, homeopathic medicines, vitamins, minerals, amino acids, proteins, enzymes, carbohydrates, lipids, glandular products, natural substances, natural medicines, protomorphogens, live cell products, gerovital, dietary and nutritional supplements, cosmetics as they are defined in the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] and nonprescription drugs as they are defined in the Pharmacy Act [Chapter 61, Article 11 NMSA 1978]; and

(2) the prescribing, administering, compounding and dispensing of the following dangerous drugs or controlled substances as they are defined in the New Mexico Drug, Device and Cosmetic Act, the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] or the Pharmacy Act, if the prescribing doctor of oriental medicine has fulfilled the requirements for expanded practice and prescriptive authority in accordance with the rules promulgated by the board for the substances enumerated in this paragraph:

- (a) sterile water;
- (b) sterile saline;
- (c) sarapin or its generic;
- (d) caffeine;
- (e) procaine;
- (f) oxygen;
- (g) epinephrine;
- (h) vapocoolants;
- (i) bioidentical hormones;
- (j) biological products, including therapeutic serum; and
- (k) any of the drugs or substances enumerated in Paragraph (1) of this subsection if at any time those drugs or substances are classified as dangerous drugs or controlled substances.

D. When compounding drugs for their patients, doctors of oriental medicine certified for expanded practice and prescriptive authority shall comply with the compounding requirements for licensed health care professionals in the United States pharmacopeia and national formulary.

History: Laws 2000, ch. 53, § 12; 2007, ch. 276, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 2007 amendment, effective June 15, 2007, redefined the scope of certificates for expanded practice and prescriptive authority and added Subsections B through D.

ANNOTATIONS

Regulation of fees. — Where the board adopted regulations that imposed new application and renewal fees for expanded practice certification and an administrative fee for approval of an expanded practice educational program; the application and renewal fees did not exceed the maximum set forth in the statutory schedule of application and renewal fees; the board discussed the reasons for the additional fees at a hearing before the regulations were adopted; and the new administrative fee covered the additional administrative work required to certify and approve continuing education for expanded practice, the new fees were authorized by statute and the board adequately justified its reasons for imposing the fees. *Wilcox v. N.M. Bd. of Acupuncture & Oriental Med.*, 2012-NMCA-106, 288 P.3d 902.

Regulation of the administration of substances. — The board has the power to determine how the substances listed in Section 61-14A-8.1 NMSA 1978 are to be administered. *Wilcox v. N.M. Bd. of Acupuncture & Oriental Med.*, 2012-NMCA-106, 288 P.3d 902.

Authority to define terms. — Where the board issued new regulations that redefined the terms "bioidentical hormones" and "natural substances" which had different definitions in prior regulations; the terms were not defined in the Acupuncture and Oriental Medicine Practice Act; the new definitions were developed by a joint committee of the board and the Board of Pharmacy; the definitions were informed by the Endocrine Society's characterization of such hormones; and the Attorney General advised the board that the prior definition of "natural substances" was so broad as to render the term meaningless, the board had the statutory authority to define the terms and the definitions were based on substantial evidence. *Wilcox v. N.M. Bd. of Acupuncture & Oriental Med.*, 2012-NMCA-106, 288 P.3d 902.

Regulations were lawful. — Where the board held hearings on proposed regulations to establish a formulary to guide extended prescriptive authority, admitted numerous exhibits, heard testimony and public comment, sifted through testimony and records and weighed evidence compiled during the prior three-year period when the board considered the same regulations, and issued more than one hundred findings of fact and conclusions of law before the board adopted the regulations, the board's adoption of the regulations was not 'willful,' arbitrary, or capricious. *Wilcox v. N.M. Bd. of Acupuncture & Oriental Med.*, 2012-NMCA-106, 288 P.3d 902.

61-14A-9. Board; duties. (Repealed effective July 1, 2024.)

The board shall:

- A. establish fees;
- B. provide for the examination of applicants for licensing as doctors of oriental medicine as provided in the Acupuncture and Oriental Medicine Practice Act;
- C. keep a record of all examinations held, together with the names and addresses of all persons taking the examinations, and the examination results;
- D. notify each applicant, in writing, of the results of his examinations within twenty-one days after the results of an examination are available to the board;
- E. keep a licensee record in which the names, addresses and license numbers of all licensees shall be recorded together with a record of all license renewals, suspensions and revocations;
- F. provide for the granting and renewal of licenses and approval of educational programs; and
- G. keep an accurate record of all its meetings, receipts and disbursements.

History: 1978 Comp., § 61-14A-9, enacted by Laws 1993, ch. 158, § 17.

Repeals and reenactments. — Laws 1993, ch. 158, § 17 repealed former 61-14A-9 NMSA 1978, as enacted by Laws 1981, ch. 62, § 9, relating to qualifications for

examination, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

61-14A-10. Requirements for licensing. (Repealed effective July 1, 2024.)

The board shall grant a license to practice acupuncture and oriental medicine to a person who has:

- A. submitted to the board:
 - (1) the completed application for licensing on the form provided by the board;
 - (2) the required documentation as determined by the board;
 - (3) the required fees;
 - (4) an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency;

- (5) proof, as determined by the board, that the applicant has completed a board-approved educational program in acupuncture and oriental medicine as provided for in the Acupuncture and Oriental Medicine Practice Act and the rules of the board; and
- (6) proof that he has passed the examinations approved by the board; and
- B. complied with any other requirements of the board.

History: 1978 Comp., § 61-14A-10, enacted by Laws 1993, ch. 158, § 18; 1997, ch. 240, § 6; 2000, ch. 53, § 6.

Repeals and reenactments. — Laws 1993, ch. 158, § 18 repealed former 61-14A-10 NMSA 1978, as enacted by Laws 1981, ch. 62, § 10, relating to requirements for institutes and private tutorships, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 2000 amendment, effective May 17, 2000, redesignated the existing provisions of the section as Subsection A with Paragraphs (1) to (6) and added Subsection B.

The 1997 amendment, effective June 20, 1997, in Subsection E, substituted "a board-approved" for "an" following "completed" and deleted "and regulations" following "rules", and in Subsection F, substituted "the examinations" for "an examination".

61-14A-11. Examinations. (Repealed effective July 1, 2024.)

- A. The board shall establish procedures to ensure that examinations for licensing are offered at least once a year.
- B. The board shall establish the deadline for receipt of the application for licensing examination and other rules relating to the taking and retaking of licensing examinations.
- C. The board shall establish the passing grades for its approved examinations.
- D. The board may approve, and use as a basis for licensure, examinations that are used for national certification or other examinations.
- E. The board shall require each qualified applicant to pass a validated, objective written examination that covers areas that are not included in other examinations approved by the board, including, as a minimum, the following subjects:
- (1) anatomy and physiology;
 - (2) pathology;
 - (3) diagnosis;
 - (4) pharmacology; and
 - (5) principles, practices and treatment techniques of acupuncture and oriental medicine.
- F. The board may require each qualified applicant to pass a validated, objective practical examination that covers areas that are not included in other examinations approved by the board and that demonstrates his knowledge of and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine.
- G. The board shall require each qualified applicant to pass a written or a practical examination or both in the following subjects:
- (1) hygiene, sanitation and clean-needle technique; and
 - (2) needle and instrument sterilization techniques.
- H. The board may require each qualified applicant to pass a written examination on the state laws and rules that pertain to the practice of acupuncture and oriental medicine.
- I. If English is not the primary language of the applicant, the board may require that the applicant pass an English proficiency examination prescribed by the board.

History: 1978 Comp., § 61-14A-11, enacted by Laws 1993, ch. 158, § 19; 1997, ch. 240, § 7; 2000, ch. 53, § 7.

Repeals and reenactments. — Laws 1993, ch. 158, § 19 repealed former 61-14A-11 NMSA 1978, as enacted by Laws 1981, ch. 62, § 11, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2000 amendment, effective May 17, 2000, deleted "by rule" following "shall establish" in Subsections B and C; in Subsection D, deleted "by rule" following "approve" and added the proviso that examinations may be used as a basis for licensure; in Subsection E, inserted "validated, objective" and substituted "covers areas that are not included in

other examinations approved by the board, including" for "includes"; in Subsection F, substituted "a validated, objective practical examination that covers areas that are not included in other examinations approved by the board and that" for "a practical examination that"; and added Subsection I.

The 1997 amendment, effective June 20, 1997, added Paragraph E(4) and redesignated the following paragraph accordingly, in Subsection H, substituted "rules" for "regulations", and made minor stylistic changes.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 56 to 60.

61-14A-12. Requirements for temporary licensing. (Repealed effective July 1, 2024.)

A. The board shall establish the criteria for temporary licensing of out-of-state doctors of oriental medicine.

B. The board may grant a temporary license to a person who:

(1) is legally recognized to practice acupuncture and oriental medicine in another state or a foreign country or is legally recognized in another state or foreign country to practice another health care profession and who possesses knowledge and skills that are included in the scope of practice of doctors of oriental medicine;

(2) is under the sponsorship of and in association with a licensed New Mexico doctor of oriental medicine or New Mexico institute offering an educational program approved by the board;

(3) submits the completed application for temporary licensing on the form provided by the board;

(4) submits the required documentation, including proof of adequate education and training, as determined by the board;

(5) submits the required fee for application for temporary licensing;

(6) submits an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency; and

(7) submits an affidavit from the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico institute attesting to the qualifications of the applicant and the activities the applicant will perform.

C. The board may grant a temporary license to allow the temporary licensee to:

(1) teach acupuncture and oriental medicine;

(2) consult, in association with the sponsoring doctor of oriental medicine, regarding the sponsoring doctor's patients;

(3) perform specialized diagnostic or treatment techniques in association with the sponsoring doctor of oriental medicine regarding the sponsoring doctor's patients;

(4) assist in the conducting of research in acupuncture and oriental medicine; and

(5) assist in the implementation of new techniques and technology related to acupuncture and oriental medicine.

D. Temporary licensees may engage in only those activities authorized on the temporary license.

E. The temporary license shall identify the sponsoring and associating New Mexico doctor of oriental medicine or institute.

F. The temporary license shall be issued for a period of time established by rule; provided that temporary licenses may not be issued for a period of time to exceed eighteen months, including renewals.

G. The temporary license may be renewed upon submission of:

(1) the completed application for temporary license renewal on the form provided by the board; and

(2) the required fee for temporary license renewal.

H. In the interim between regular board meetings, whenever a qualified applicant has filed his application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary license that will suffice until the next regular licensing meeting of the board.

History: 1978 Comp., § 61-14A-12, enacted by Laws 1993, ch. 158, § 20; 2000, ch. 53, § 8.

Repeals and reenactments. — Laws 1993, ch. 158, § 20 repealed former 61-14A-12 NMSA 1978, as enacted by Laws 1981, ch. 62, § 12, relating to reciprocal licensure requirements, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 2000 amendment, effective May 17, 2000, deleted "by rule" following "establish" in Subsection A, substituted "a person" for "any person" in Subsection B, and rewrote Subsection B(1).

61-14A-13. Requirements for expedited licensing. (Repealed effective July 1, 2024.)

A. The board shall grant a license to practice acupuncture and oriental medicine without examination to a person who has been licensed, certified, registered or legally recognized as a doctor of oriental medicine in another licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978 if the applicant:

- (1) submits the completed application for expedited licensing on the form provided by the board;
- (2) submits the required documentation as determined by the board;
- (3) submits the required fee for application for expedited licensing; and
- (4) passes a written examination on the state laws and rules that pertain to the practice of acupuncture and oriental medicine, if the board requires regular applicants for licensure to pass such an examination.

B. The board shall issue the expedited license as soon as practicable but no later than thirty days after the person files an application with the required fees and demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction and has practiced for at least two years immediately prior to application in New Mexico. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

C. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: 1978 Comp., § 61-14A-13, enacted by Laws 1993, ch. 158, § 21; 1997, ch. 240, § 8; 2022, ch. 39, § 60.

Repeals and reenactments. — Laws 1993, ch. 158, § 21 repealed former 61-14A-13 NMSA 1978, as enacted by Laws 1981, ch. 62, § 13, relating to continuing education, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of acupuncture and oriental medicine shall issue a license to practice acupuncture and oriental medicine without an examination to a person who has been licensed, certified, registered or legally recognized as a doctor of oriental medicine in another licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978 if the applicant completes an application, submits the required documentation and fee, and passes a written examination on the state laws and rules that pertain to the practice of acupuncture and oriental medicine, if the board requires regular applicants for licensure to pass such an examination, provided that the board shall issue the expedited license within thirty days after the person files an application and demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction and has practiced for at least two years immediately prior to application in New Mexico, provided that if the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from

which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, deleted "reciprocal" and added "expedited"; redesignated former Subsections A through C as Paragraphs A(1) through A(3), respectively; in Subsection A, after "The board", deleted "may" and added "shall", after "to practice acupuncture and oriental medicine", added "without examination", and after "another", deleted "state, District or territory of the United States or foreign country" and added "licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978", and in Paragraph A(3), after "application for", deleted "reciprocal" and added "expedited"; deleted former Subsections D and E and redesignated former Subsection F as Paragraph A(4), and in Paragraph A(4), deleted "has passed" and added "passes"; and deleted former Subsections G and H and added new Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 1997 amendment, effective June 20, 1997, in Subsection E, inserted "if the board requires regular applicants to pass a practical examination" near the middle, added Subsection F, and redesignated the following subsections accordingly.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 67, 68.

61-14A-14. Approval of educational programs. (Repealed effective July 1, 2024.)

A. The board shall establish by rule the criteria for board approval of educational programs in acupuncture and oriental medicine. For an educational program to meet board approval, proof shall be submitted to the board demonstrating that the educational program as a minimum:

- (1) was for a period of not less than four academic years;
- (2) included a minimum of nine hundred hours of supervised clinical practice;
- (3) was taught by qualified teachers or tutors;
- (4) required as a prerequisite to graduation personal attendance in all classes and clinics

and, as a minimum, the completion of the following subjects:

- (a) anatomy and physiology;
- (b) pathology;
- (c) diagnosis;
- (d) pharmacology;
- (e) oriental principles of life therapy, including diet, nutrition and counseling;
- (f) theory and techniques of oriental medicine;
- (g) precautions and contraindications for acupuncture treatment;
- (h) theory and application of meridian pulse evaluation and meridian point location;
- (i) traditional and modern methods of qi or life-energy evaluation;
- (j) the prescription of herbal medicine and precautions and contraindications for its use;
- (k) hygiene, sanitation and clean-needle technique;
- (l) care and management of needling devices; and
- (m) needle and instrument sterilization techniques; and

(5) resulted in the presentation of a certificate or diploma after completion of all the educational program requirements.

B. All in-state educational programs in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board shall be approved annually by the board. The applicant shall submit the following:

- (1) the completed application for approval of an educational program;
- (2) the required documentation as determined by the board;
- (3) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and
- (4) the required fee for application for approval of an educational program.

C. Out-of-state educational programs in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board may apply for approval by the board. The applicant shall submit the following:

- (1) the completed application for approval of an educational program;
- (2) the required documentation as determined by the board;
- (3) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and
- (4) the required fee for application for approval of an educational program.

D. Each in-state approved educational program shall renew its approval annually by submitting prior to the date established by the board:

- (1) the completed application for renewal of approval of an educational program on the form provided by the board;
- (2) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and
- (3) the required fee for application for renewal of approval of an educational program.

E. Each out-of-state approved educational program may renew its approval annually by submitting prior to the date established by the board:

- (1) the completed application for renewal of approval of an educational program on the form provided by the board;
- (2) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and

(3) the required fee for application for renewal of approval of an educational program.

F. A sixty-day grace period shall be allowed each educational program after the end of the approval period, during which time the approval may be renewed by submitting:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met;

(3) the required fee for application for renewal of approval of an educational program; and

(4) the required fee for late renewal of approval.

G. An approval that is not renewed by the end of the grace period shall be considered expired, and the educational program must apply as a new applicant.

History: 1978 Comp., § 61-14A-14, enacted by Laws 1993, ch. 158, § 22; 1997, ch. 240, § 9; 2000, ch. 53, § 9.

Repeals and reenactments. — Laws 1993, ch. 158, § 22 repealed former 61-14A-14 NMSA 1978, as enacted by Laws 1981, ch. 62, § 14, relating to refusal, suspension or revocation of license, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 2000 amendment, effective May 17, 2000, in the introductory language of Subsection A, deleted "in acupuncture and oriental medicine" preceding "to meet board

approval" and inserted "as a minimum"; in Subsection A(2), substituted "nine hundred hours" for "seven hundred fifty hours"; substituted "tutors" for "a qualified private tutor" in Subsection A(3); deleted "traditional and modern acupuncture and" preceding "oriental" in Subsection A(4)(f); inserted "qi or" in Subsection A(4)(i); and rewrote the introductory language in Subsections B through G.

The 1997 amendment, effective June 20, 1997, added Subparagraph A(4)(d) and redesignated the following subparagraphs accordingly, and made minor stylistic changes throughout the section.

61-14A-14.1. Students and externs; supervised practice. (Repealed effective July 1, 2024.)

A. A student enrolled in an approved educational program may practice acupuncture and oriental medicine under the direct supervision of a teacher or tutor as part of the educational program.

B. The board may promulgate rules to govern the practice of acupuncture and oriental medicine by externs. The rules shall include qualifications for externs and supervising doctors of oriental medicine or other supervising health care professionals and the allowable scope of practice for externs. The board may charge a fee for approval and renewal of approval of extern programs. Participation as an extern is optional and not a requirement for licensure.

History: Laws 2000, ch. 53, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

61-14A-15. License renewal. (Repealed effective July 1, 2024.)

A. Each licensee shall renew his license annually by submitting prior to the date established by the board:

(1) the completed application for license renewal on the form provided by the board; and

(2) the required fee for annual license renewal.

B. The board may require proof of continuing education or other proof of competency as a requirement for renewal.

C. A sixty-day grace period shall be allowed each licensee after the end of the licensing period, during which time the license may be renewed by submitting:

(1) the completed application for license renewal on the form provided by the board;

(2) the required fee for annual license renewal; and

(3) the required late fee.

D. Any license not renewed at the end of the grace period shall be considered expired and the licensee shall not be eligible to practice within the state. For reinstatement of an expired license within one year of the date of renewal, the board shall establish any requirements or fees that are

in addition to the fee for annual license renewal and may require the former licensee to reapply as a new applicant.

History: 1978 Comp., § 61-14A-15, enacted by Laws 1993, ch. 158, § 23; 2000, ch. 53, § 10.

Repeals and reenactments. — Laws 1993, ch. 158, § 23 repealed former 61-14A-15 NMSA 1978, as enacted by Laws 1981, ch. 62, § 15, relating to penalties, and enacted the above section, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 2000 amendment, effective May 17, 2000, changed the requirement that licenses be renewed biennially to annually; added "prior to the date established by the board" in Subsection A; substituted "late fee" for "fee for late license renewal" in Subsection C(3); in Subsection D, substituted "reinstatement" for "renewal", inserted "within one year of the date of renewal", and deleted "by rule" following "establish".

61-14A-16. Fees. (Repealed effective July 1, 2024.)

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable nonrefundable fees not to exceed the following amounts:

- A. application for licensing \$800;
 - B. application for expedited licensing 750;
 - C. application for temporary licensing 500;
 - D. examination, not including the cost of any nationally recognized examination 700;
 - E. annual license renewal 400;
 - F. late license renewal 200;
 - G. expired license renewal 400;
 - H. temporary license renewal 100;
 - I. application for approval or renewal of approval of an educational program 600;
 - J. late renewal of approval of an educational program 200;
 - K. annual continuing education provider registration 200;
 - L. application for extended or expanded prescriptive authority 500;
 - M. application for externship supervisor registration 500;
 - N. application for extern certification 500;
- and
- O. fees to cover reasonable and necessary administrative expenses.

History: 1978 Comp., § 61-14A-16, enacted by Laws 1993, ch. 158, § 24; 2001, ch. 263, § 1; 2001, ch. 266, § 2; 2020, ch. 6, § 40; 2022, ch. 39, § 61.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 158, § 24 repealed former 61-14A-16 NMSA 1978, as enacted by Laws 1987, ch. 124, § 5, providing for termination of agency life and delayed repeal, and enacted the above section, effective June 18, 1993.

The 2022 amendment, effective May 18, 2022, included "expedited licensing" in the list of fees; and in Subsection B, after "application for", deleted "reciprocal" and added "expedited".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

The 2001 amendment, effective July 1, 2001, substituted "\$800" for "\$500" in Subsection A; substituted "\$500" for "\$300" in Subsection C; substituted "\$700" for "\$350" in Subsection D; substituted "annual" for "biennial" in Subsection E; deleted former Subsection K, which read "expired renewal of approval of an educational program. 400"; redesignated former Subsection L as K; added Subsections L, M and N; and redesignated former Subsection M as O.

61-14A-17. Disciplinary proceedings; judicial review; application of Uniform Licensing Act. (Repealed effective July 1, 2024.)

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, revoke or suspend any permanent or temporary license held or applied for under the Acupuncture and Oriental Medicine Practice Act, upon findings by the board that the licensee or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license;
- (2) has been convicted of a felony. A certified copy of the record of conviction shall be conclusive evidence of such conviction;
- (3) is guilty of incompetence as defined by board rule;
- (4) is habitually intemperate, is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice as a doctor of oriental medicine;
- (5) is guilty of unprofessional conduct, as defined by board rule;
- (6) is guilty of any violation of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];
- (7) has violated any provision of the Acupuncture and Oriental Medicine Practice Act or rules promulgated by the board;
- (8) is guilty of failing to furnish the board, its investigators or representatives with information requested by the board;
- (9) is guilty of willfully or negligently practicing beyond the scope of acupuncture and oriental medicine as defined in the Acupuncture and Oriental Medicine Practice Act;
- (10) is guilty of failing to adequately supervise a sponsored temporary licensee;
- (11) is guilty of aiding or abetting the practice of acupuncture and oriental medicine by a person not licensed by the board;
- (12) is guilty of practicing or attempting to practice under an assumed name;
- (13) advertises by means of knowingly false statements;
- (14) advertises or attempts to attract patronage in any unethical manner prohibited by the Acupuncture and Oriental Medicine Practice Act or the rules of the board;
- (15) has been declared mentally incompetent by regularly constituted authorities;
- (16) has had a license, certificate or registration to practice as a doctor of oriental medicine revoked, suspended or denied in any jurisdiction of the United States or a foreign country for actions of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking such disciplinary action will be conclusive evidence thereof; or
- (17) fails, when diagnosing or treating a patient, to possess or apply the knowledge or to use the skill and care ordinarily used by reasonably well-qualified doctors of oriental medicine practicing under similar circumstances, giving due consideration to the locality involved.

B. Disciplinary proceedings may be instituted by any person, shall be by sworn complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of the costs of the copy.

C. Any person filing a sworn complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

D. The licensee shall bear the costs of disciplinary proceedings unless exonerated.

History: 1978 Comp., § 61-14A-17, enacted by Laws 1993, ch. 158, § 25; 1997, ch. 240, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 1997 amendment, effective June 20, 1997, in Paragraph A(3), added "as defined by board rule" at the end, substituted "promulgated" for "and regulations adopted" in Paragraph A(7), deleted "and regulations" following "rules" in Paragraph A(15), added Paragraph A(17) and Subsection D, and made a minor stylistic change.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Physicians, Surgeons and Other Healers, §§ 74 to 120.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 35 to 42.

61-14A-18. Fund created. (Repealed effective July 1, 2024.)

A. There is created in the state treasury the "board of acupuncture and oriental medicine fund".

B. All money received by the board pursuant to the Acupuncture and Oriental Medicine Practice Act shall be deposited with the state treasurer for credit to the board of acupuncture and oriental medicine fund. The state treasurer shall invest the fund as other state funds are invested. All balances in the fund shall remain in the fund and shall not revert to the general fund.

C. Money in the board of acupuncture and oriental medicine fund is appropriated to the board and shall be used only for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Acupuncture and Oriental Medicine Practice Act.

History: 1978 Comp., § 61-14A-18, enacted by Laws 1993, ch. 158, § 26.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

61-14A-19. Penalties. (Repealed effective July 1, 2024.)

A. A person who violates a provision of the Acupuncture and Oriental Medicine Practice Act is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978.

B. In addition to criminal penalties, a person who engages in acupuncture or oriental medicine without a license is subject to disciplinary proceedings by the board. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty in an amount not to exceed two thousand dollars (\$2,000) against such person and may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing. The fine shall be deposited to the credit of the current school fund.

History: 1978 Comp., § 61-14A-19, enacted by Laws 1993, ch. 158, § 27; 2017, ch. 52, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided additional penalties for engaging in acupuncture or oriental medicine without a license, directed that money collected from fines be deposited to the credit of the current school fund; added the subsection designation "A."

preceding the first sentence of the section; in Subsection A, after the subsection designation, deleted "Any" and added "A", and after "who violates", deleted "any" and added "a"; and added new Subsection B.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 125 to 130.

61-14A-20. Criminal Offender Employment Act. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [28-2-1 through 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Acupuncture and Oriental Medicine Practice Act.

History: 1978 Comp., § 61-14A-20, enacted by Laws 1993, ch. 158, § 28.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

61-14A-21. Licensed acupuncture practitioner; license valid under new act. (Repealed effective July 1, 2024.)

Any person validly licensed as an acupuncture practitioner under prior law of this state shall be deemed licensed under the provisions of the Acupuncture and Oriental Medicine Practice Act.

History: 1978 Comp., § 61-14A-21, enacted by Laws 1993, ch. 158, § 29.

Delayed repeals. — For delayed repeal of this section, see 61-14A-22 NMSA 1978.

61-14A-22. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The board of acupuncture and oriental medicine is terminated on July 1, 2023 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the Acupuncture and Oriental Medicine Practice Act until July 1, 2024. Effective July 1, 2024, Chapter 61, Article 14A NMSA 1978 is repealed.

History: 1978 Comp., § 61-14A-22, enacted by Laws 1993, ch. 158, § 30; 2000, ch. 4, § 10; 2000, ch. 53, § 13; 2005, ch. 208, § 11; 2017, ch. 52, § 4.

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024".

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 2000 amendment, effective May 17, 2000, extended the termination date of the board from 1999 to

2005, substituted "the Acupuncture and Oriental Medicine Practice Act" for "Sections 61-14A-1 through 61-14A-21 NMSA 1978" and "July 1, 2006" for "July 1 2000" in the second sentence, and substituted "2006, Chapter 61, Article 14A NMSA 1978 is" for "2000, Sections 61-14A-1 through 61-14A-21 NMSA 1978 are" in the last sentence. This section was also amended by Laws 2000, ch. 4, § 10. The section was set out as amended by Laws 2000, ch. 53, § 13. See 12-1-8 NMSA 1978.

ARTICLE 14B

Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices

Sec.

61-14B-1. Short title. (Repealed effective July 1, 2028.)

61-14B-2. Definitions. (Repealed effective July 1, 2028.)

61-14B-3. Scope of practice; speech-language pathology. (Repealed effective July 1, 2028.)

61-14B-3.1. Scope of practice; apprentice in speech and language. (Repealed effective July 1, 2028.)

61-14B-3.2. Scope of practice; clinical fellow of speech-language pathology. (Repealed effective July 1, 2028.)

61-14B-4. Repealed.

61-14B-5. Scope of practice; audiologists. (Repealed effective July 1, 2028.)

61-14B-6. Scope of practice; hearing aid dispenser. (Repealed effective July 1, 2028.)

61-14B-7. License required. (Repealed effective July 1, 2028.)

61-14B-8. Exemptions. (Repealed effective July 1, 2028.)

61-14B-9. Board created. (Repealed effective July 1, 2028.)

61-14B-10. Terms; reimbursement; meetings. (Repealed effective July 1, 2028.)

61-14B-11. Board powers and duties. (Repealed effective July 1, 2028.)

61-14B-12. Requirements for licensure; speech-language pathologist. (Repealed effective July 1, 2028.)

61-14B-12.1. Requirements for licensure; audiologist. (Repealed effective July 1, 2028.)

61-14B-13. Requirements for endorsement to dispense hearing aids as an otolaryngologist. (Repealed effective July 1, 2028.)

61-14B-13.1. Requirements for bilingual-multicultural endorsement. (Repealed effective July 1, 2028.)

Sec.

61-14B-14. Requirements for licensure by examination; hearing aid dispenser. (Repealed effective July 1, 2028.)

61-14B-15. Requirements for licensure; clinical fellow of speech-language pathology. (Repealed effective July 1, 2028.)

61-14B-15.1. Requirements for licensure; apprentice in speech and language. (Repealed effective July 1, 2028.)

61-14B-16. Licensure under prior laws. (Repealed effective July 1, 2028.)

61-14B-16.1. Expedited licensure. (Repealed effective July 1, 2028.)

61-14B-17. Hearing aid dispensing temporary trainee permits; issuance. (Repealed effective July 1, 2028.)

61-14B-18. Scope of hearing aid dispensing examination. (Repealed effective July 1, 2028.)

61-14B-19. License renewal. (Repealed effective July 1, 2028.)

61-14B-20. Fees. (Repealed effective July 1, 2028.)

61-14B-21. Disciplinary proceedings; judicial review. (Repealed effective July 1, 2028.)

61-14B-22. Penalties. (Repealed effective July 1, 2028.)

61-14B-23. Criminal Offender Employment Act. (Repealed effective July 1, 2028.)

61-14B-24. Fund established. (Repealed effective July 1, 2028.)

61-14B-25. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

61-14B-1. Short title. (Repealed effective July 1, 2028.)

Chapter 61, Article 14B NMSA 1978 may be cited as the "Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act".

History: Laws 1996, ch. 57, § 1; 1999, ch. 128, § 1.

Repeals and reenactments. — Laws 1996, ch. 57, § 27, repealed 61-14B-1 NMSA 1978, as enacted by Laws 1981, ch. 249, § 1, and § 1 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 1999 amendment, effective June 18, 1999, updated statutory references.

61-14B-2. Definitions. (Repealed effective July 1, 2028.)

As used in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act:

A. "apprentice" means a person working toward full licensure in speech-language pathology who meets the requirements for licensure as an apprentice in speech and language pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

B. "appropriate supervisor" means a person licensed pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act who has a minimum of two years' experience as a speech-language pathologist after the clinical fellowship year;

C. "auditory trainer" means a custom-fitted FM amplifying instrument other than a hearing aid designed to enhance signal-to-noise ratios;

D. "audiologist" means a person who engages in the practice of audiology, who may or may not dispense hearing aids and who meets the qualifications set forth in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

E. "bilingual-multicultural endorsement" means an endorsement that is issued pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act to a qualified speech-language pathologist and that recognizes the licensee's or applicant's demonstrated proficiency in the use of languages other than English to provide speech-language pathology services;

F. "board" means the speech-language pathology, audiology and hearing aid dispensing practices board;

G. "business location" means a permanent physical business location in New Mexico where records can be examined and process served;

H. "certification by a national professional association" means certification issued by a board-approved national speech-language or hearing association;

I. "clinical fellow" means a person who has completed all academic course work and practicum requirements for a master's degree or the equivalent in speech-language pathology and engages in the practice of speech-language pathology as set forth in the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

J. "clinical fellowship year" or "CFY" means the time following the completion of all academic course work and practicum requirements for a master's degree in speech-language pathology and during which a clinical fellow is working toward certification by a national professional association;

K. "department" means the regulation and licensing department;

L. "hearing aid" means a wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, including earmolds but excluding batteries and cords;

M. "hearing aid dispenser" means a person other than an audiologist or an otolaryngologist who is licensed to sell, fit and service hearing aids pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act and maintains or occupies a permanent physical business location in New Mexico where records can be examined and process can be served;

N. "otolaryngologist" means a licensed physician who has completed a recognized residency in otolaryngology and is certified by the American board of otolaryngology;

O. "paraprofessional" means a person who provides adjunct speech-pathology or audiology services under the direct supervision of a licensed speech-language pathologist or audiologist;

P. "practice of audiology" means the application of principles, methods and procedures of measurement, testing, appraisal, prognostication, aural rehabilitation, aural habilitation, consultation, hearing aid selection and fitting, counseling, instruction and research related to hearing and disorders of hearing for the purpose of nonmedical diagnosis, prevention, identification, amelioration or the modification of communicative disorders involving speech, language auditory function or other aberrant behavior related to hearing disorders;

Q. "practice of hearing aid dispensing" means the behavioral measurement of human hearing for the purpose of the selection and fitting of hearing aids or other rehabilitative devices to

ameliorate the dysfunction of hearing sensitivity; this may include otoscopic inspection of the ear, fabrication of ear impressions and earmolds, instruction, consultation and counseling on the use and care of these instruments, medical referral when appropriate and the analysis of function and servicing of these instruments involving their modification or adjustment;

R. "practice of speech-language pathology" means the rendering or offering to render to individuals, groups, organizations or the public any service in speech or language pathology involving the nonmedical application of principles, methods and procedures for the measurement, testing, diagnosis, prognostication, counseling and instruction related to the development and disorders of communications, speech, fluency, voice, verbal and written language, auditory comprehension, cognition, dysphagia, oral pharyngeal or laryngeal sensorimotor competencies and treatment of persons requiring use of an augmentative communication device for the purpose of nonmedical diagnosing, preventing, treating and ameliorating such disorders and conditions in individuals and groups of individuals;

S. "screening" means a pass-fail procedure to identify individuals who may require further assessment in the areas of speech-language pathology, audiology or hearing aid dispensing;

T. "speech-language pathologist" means a person who engages in the practice of speech-language pathology and who meets the qualifications set forth in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

U. "sponsor" means a licensed hearing aid dispenser, audiologist or otolaryngologist who has an endorsement to dispense hearing aids and:

(1) is employed in the same business location where the trainee is being trained; and

(2) has been actively engaged in the dispensing of hearing aids during three of the past five years;

V. "student" means a person who is a full- or part-time student enrolled in an accredited college or university program in speech-language pathology, audiology or communicative disorders;

W. "supervisor" means a speech-language pathologist or audiologist licensed pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act who provides supervision in the area of speech-language pathology or audiology; and

X. "trainee" means a person working toward full licensure as a hearing aid dispenser under the direct supervision of a sponsor.

History: Laws 1996, ch. 57, § 2; 1999, ch. 128, § 2; 2013, ch. 110, § 1; 2015, ch. 110, § 1.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-2 NMSA 1978, as enacted by Laws 1981, ch. 249, § 2, and Laws 1996, ch. 57, § 2 enacted a new section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended certain definitions and defined "bilingual-multicultural endorsement" and "certification by a national professional association" in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act; added new Subsection E, which defined "bilingual-multicultural endorsement", and redesignated former Subsections E and F as Subsections F and G; added new Subsection H, which defined "certification by a national professional association", and redesignated former Subsections G through V as Subsections I through X, respectively; and in Subsection J, after "working toward", deleted "a certificate of clinical competence from a nationally recognized speech-language or hearing association or the equivalent" and added "certification by a national professional association".

The 2013 amendment, effective June 14, 2013, defined "appropriate supervisor"; added Subsection B; in Subsection G, after "speech-language pathology", deleted "or audiology or both"; in Subsection H, after "speech-language pathology", deleted "or audiology or both"; and deleted former Subsection H which defined "CFY" as a person licensed to oversee clinical fellows.

The 1999 amendment, effective June 18, 1999, added present Subsection A, and redesignated former Subsections A to C as Subsections B to D; added present Subsection E, and redesignated former Subsections D to G as Subsections F to I; deleted former Subsection H, which provided a definition for "dispensing audiologist", and redesignated former Subsections I and J as Subsections J and K; deleted former Subsection K, which defined "non-dispensing audiologist"; in present Subsection K, deleted "dispensing" preceding "audiologist"; added present Subsection O, and redesignated former Subsections O and P as Subsections P and R; in present Subsection P, inserted "communications" preceding "disorders of"; added present Subsection Q, redesignated former Subsection Q as Subsection S, and rewrote it; added Subsections T and U; redesignated former Subsection R as Subsection V, and in it substituted "dispenser" for "dealer or fitter".

61-14B-3. Scope of practice; speech-language pathology. (Repealed effective July 1, 2028.)

A. The scope of practice for speech-language pathologists shall include:

(1) rendering or offering to render professional services, including diagnosis, prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction, counseling, prognostication, training and research to individuals or groups of individuals who have or are suspected of having disorders of communication, including speech comprehension, voice, fluency, language in all its expressive and receptive forms, including oral expression, reading, writing and comprehension, oral pharyngeal function, oral motor function, dysphagia, functional maintenance therapy or cognitive-communicative processes; and

(2) determining the need for personal augmentative and alternative communication systems, computer access or assistive technology, recommending such systems, and providing set-up, modification, training, trouble-shooting and follow-up in the utilization of such systems.

B. The scope of practice for speech-language pathologists may include:

(1) conducting pure-tone air conduction hearing screening, tympanometry screening, limited to a pass or fail determination, for the purpose of performing a speech and language evaluation or for the initial identification of individuals with other disorders of communications;

(2) aural rehabilitation that is defined as services and procedures for facilitation of adequate receptive and expressive communication in individuals with hearing impairment; or

(3) supervision of graduate students, clinical fellows or paraprofessionals.

History: Laws 1996, ch. 57, § 3.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-3 NMSA 1978, as enacted by Laws 1981, ch. 249, § 3, relating to appointment of the speech-language pathology and audiology advisory board, and §

3 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

61-14B-3.1. Scope of practice; apprentice in speech and language. (Repealed effective July 1, 2028.)

The scope of practice for an apprentice in speech and language is to provide adjunct services that are planned, selected or designed by the supervising speech-language pathologist. These services may include:

- A. conducting speech-language or hearing screenings;
- B. following documented intervention plans or protocols;
- C. preparing written daily plans based on the overall intervention plan;
- D. recording, charting, graphing or otherwise displaying data relative to client performance and reporting performance changes to the supervisor;
- E. maintaining daily service notes and completing daily charges as requested;
- F. reporting but not interpreting data relative to client performance to teacher, family or other professionals;
- G. performing clerical duties, including maintenance of therapy and diagnostic materials, equipment and client files as directed by the supervisor;
- H. assisting the speech-language pathologist during client treatment and assessment; and
- I. assisting the speech-language pathologist in research, in-service, training and public relations programs.

History: Laws 1999, ch. 128, § 3; 2005, ch. 250, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed "treatment" to "intervention" in Subsection B;

deleted "or delivery notes" in Subsection E; and deleted former Subsection F, which provided that the services may include reporting but not interpreting data relative to client performance to teacher, family or other professionals.

61-14B-3.2. Scope of practice; clinical fellow of speech-language pathology. (Repealed effective July 1, 2028.)

A. The scope of practice for a clinical fellow of speech-language pathology under supervision by an appropriate supervisor shall include:

(1) rendering or offering to render professional services, including diagnosis, prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction, counseling, prognostication, training and research, to individuals or groups of individuals who have or are suspected of having disorders of communication, including speech comprehension; voice fluency; language in all its expressive and receptive forms, including oral expression, reading, writing and comprehension; oral pharyngeal function; oral motor function; dysphagia; functional maintenance therapy; or cognitive-communicative processes; and

(2) determining the need for personal augmentative and alternative communication systems, computer access systems or assistive technology systems; recommending such systems; and providing setup modification, training, troubleshooting and follow-up in the utilization of such systems.

B. The scope of practice for a clinical fellow of speech-language pathology under supervision by an appropriate supervisor may include:

(1) conducting pure-tone air conduction hearing screening or tympanometry screening, limited to a pass or fail determination, for the purpose of performing a speech and language evaluation or for the initial identification of individuals with other disorders of communication; and

(2) aural rehabilitation that is defined as services and procedures for facilitation of adequate receptive and expressive communication in individuals with hearing impairment.

History: Laws 2013, ch. 110, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

Effective dates. — Laws 2013, ch. 110 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

61-14B-4. Repealed.

Repeals. — Laws 1999, ch. 128, § 11 repealed 61-14B-4 NMSA 1978, as enacted by Laws 1996, ch. 57, § 4, relating to the scope of practice for nondispensing audiologists,

effective June 18, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 61-14B-5 NMSA 1978.

61-14B-5. Scope of practice; audiologists. (Repealed effective July 1, 2028.)

The scope of practice for audiologists shall include:

A. the rendering or offering to render professional services, including nonmedical diagnosis, prevention, identification, evaluation, consultation, counseling, habilitation, rehabilitation and instruction on and prognostication of individuals having or suspected of having disorders of hearing, balance or central auditory processing;

B. identification and evaluation of auditory function through the performance and interpretation of appropriate behavioral or electrophysiological tests for this purpose;

C. making ear impressions for use with auditory trainers or for non-amplified devices such as swim molds or ear protectors;

D. cerumen management;

E. evaluation and management of tinnitus;

F. the scope of practice for hearing aid dispensers;

G. consultation regarding noise control or environmental noise evaluation;

H. hearing conservation;

I. calibration of equipment used in hearing testing and environmental evaluation;

J. fitting and management of auditory trainers, including their general service, adjustment and analysis of function, as well as instruction, orientation and counseling in the use and care of these instruments;

K. speech or language screening for the purposes of audiological evaluation or initial identification for referral of individuals with disorders of communication other than hearing;

L. supervision of students, clinical fellows and paraprofessionals; and

M. sponsorship of hearing aid dispenser trainees.

History: Laws 1996, ch. 57, § 5; 1999, ch. 128, § 4; 2013, ch. 110, § 3.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-5 NMSA 1978, as enacted by Laws 1981, ch. 249, § 5, relating to licensure and regulation of speech-language pathologists or audiologists, and § 5 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, broadened the scope of practice for audiologists; in Subsection

B, deleted the introductory language "The scope of practice for audiologists may include"; added Subsection F; and deleted former Subsection G, which provided that authorized the scope of practice of audiologists to be expanded to include dispensing of hearing aids.

The 1999 amendment, effective June 18, 1999, in the section heading, deleted "dispensing" preceding "audiologists"; and rewrote the section to the extent that a detailed comparison is impracticable.

61-14B-6. Scope of practice; hearing aid dispenser. (Repealed effective July 1, 2028.)

The scope of practice of the hearing aid dispenser shall include:

- A. the measurement and evaluation of the sensitivity of human hearing by means of appropriate behavioral testing equipment for the purpose of amplification;
- B. the otoscopic observation of the outer ear in connection with the evaluation of hearing and the fitting of hearing aids and for the purpose of referral to other professionals;
- C. the fabrication of ear impressions or ear molds for the purpose of selecting and fitting hearing aids;
- D. the analysis of hearing aid function by means of the appropriate testing equipment;
- E. the selection and fitting of hearing aids with appropriate instruction, orientation, counseling and management regarding the use and maintenance of these devices; and
- F. the modification and general servicing of hearing aids.

History: Laws 1996, ch. 57, § 6.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-6 NMSA 1978, as enacted by Laws 1981, ch. 249, § 6, relating to persons and practices not restricted by provisions of the Speech-Language Pathology and Audiology Act, and § 6 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity and construction of state statutes regulating hearing aid fitting or sales, 96 A.L.R.3d 1030.

61-14B-7. License required. (Repealed effective July 1, 2028.)

A. Unless licensed to practice speech-language pathology, audiology or hearing aid dispensing under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, no person shall:

- (1) practice as a speech-language pathologist, audiologist or hearing aid dispenser;
- (2) use the title or make any representation as being a licensed speech-language pathologist, audiologist or hearing aid dispenser or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a speech-language pathologist, audiologist or hearing aid dispenser; or
- (3) advertise, hold out to the public or represent in any manner that one is authorized to practice speech-language pathology, audiology or hearing aid dispensing.

B. No person shall make any representation as being a speech-language pathologist or hold out to the public by any means or by any service or function perform, directly or indirectly, or by using the terms "speech pathology", "speech pathologist", "speech therapy", "speech therapist", "speech correction", "speech correctionist", "speech clinic", "speech clinician", "language pathology", "language pathologist", "voice therapy", "voice therapist", "voice pathology", "voice pathologist", "logopedics", "logopedist", "communicology", "communicologist", "aphasiology", "aphasiologist", "phoniatriest" or "swallowing therapist" unless licensed as such under the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

C. No person shall make any representation as being an audiologist or hold out to the public by any means, or by any service or function perform directly or indirectly, or by using the terms "audiology", "audiologist", "audiometry", "audiometrist", "audiological", "audiometrics", "hearing

therapy", "hearing therapist", "hearing clinic", "hearing clinician", "hearing center", "hearing aid audiologist" or "audioprosthologist" unless licensed as such under the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

D. No person shall make any representation as being a hearing aid dispenser or use the terms "hearing aid dealer", "hearing aid fitter", "hearing aid sales", "hearing aid center" or "hearing aid service center" unless licensed as such under the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

History: Laws 1996, ch. 57, § 7; 2013, ch. 110, § 4.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-7 NMSA 1978, as enacted by Laws 1981, ch. 249, § 7, relating to enforcement by the department of rules and regulations of the Speech-Language Pathology and Audiology Act, and § 7 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed terminology; and in Paragraph (2) of Subsection A and in Subsections B, C, and D, deleted "represent himself to be" and added "make any representation as being".

61-14B-8. Exemptions. (Repealed effective July 1, 2028.)

A. Nothing in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act shall be construed to prevent qualified members of other recognized professions that are licensed, certified or registered under New Mexico law or regulation from rendering services within the scope of their licenses, certificates or registrations, provided that they do not represent themselves as holding licenses in speech-language pathology, audiology or hearing aid dispensing.

B. A person not meeting the requirements for licensure as a speech-language pathologist or audiologist under the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act may practice as a speech pathologist or audiologist until July 1, 1997 if:

(1) the person is employed as a speech pathologist or audiologist on a waiver license issued by the public education department prior to the effective date of that act; and

(2) the person is actively seeking the educational requirements for licensure under that act.

C. Nothing in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act prevents qualified members of other recognized professional groups, such as licensed physicians, dentists or teachers of the deaf, from doing appropriate work in the area of communication disorders consistent with the standards and ethics of their respective professions.

D. Nothing in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act restricts the activities and services of a speech-language pathology or audiology graduate student at an accredited or approved college or university or an approved clinical training facility; provided that these activities and services constitute part of the student's supervised course of study and that the student is designated as a speech-language pathology or audiology graduate student or other title clearly indicating the training status appropriate to the student's level of training.

History: Laws 1996, ch. 57, § 8; 2013, ch. 110, § 5.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-8 NMSA 1978, as enacted by Laws 1981, ch. 249, § 8, relating to qualifications of applicants for licensure as a speech-language pathologist or audiologist, and § 8 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed terminology; in Subsection A, changed "license", "certificate" and "registration" to their plural forms; in Subsection B, changed "he" to "the person" and "state department of public education" to "public education department"; and in Subsection D, changed "he" or "his" to "the student".

61-14B-9. Board created. (Repealed effective July 1, 2028.)

A. There is created the "speech-language pathology, audiology and hearing aid dispensing practices board" that shall be administratively attached to the department.

B. The board shall consist of eleven members who have been New Mexico residents for at least five years prior to their appointment. Among the membership, three members shall be licensed

speech-language pathologists, two members shall be licensed audiologists, two members shall be licensed hearing aid dispensers, one member shall be a licensed otolaryngologist and three members shall represent the public and have no interest, direct or indirect, in the profession regulated.

C. A licensed member of the board shall not hold any elected or appointed office in any related professional organization.

History: Laws 1996, ch. 57, § 9; 2013, ch. 110, § 6.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-9 NMSA 1978, as enacted by Laws 1981, ch. 249, § 9, relating to special conditions for licensing of applicants to practice speech-language pathology or audiology, and § 9 of that act enacts the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, increased the number of board members; increased the number of board members who are licensed speech-language pathologists; in Subsection B, in the first sentence, after "shall consist of", deleted "ten" and added "eleven" and in the second sentence, after "Among the membership" deleted "two" and added "three".

61-14B-10. Terms; reimbursement; meetings. (Repealed effective July 1, 2028.)

A. Members of the board shall be appointed by the governor for staggered terms of three years. Each member shall hold office until the member's successor is appointed. Vacancies shall be filled for the unexpired term in the same manner as original appointments.

B. A majority of the board members serving constitutes a quorum of the board. The board shall meet at least once a year and at such other times as it deems necessary.

C. The board shall elect a chair and other officers as deemed necessary to administer its duties.

D. No board member shall serve more than two full consecutive terms, and a member failing to attend three meetings after proper notice shall automatically be recommended for removal as a board member unless excused for reasons set forth in board regulations.

E. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

F. No member of the board shall be liable in a civil action for any act performed in good faith in the performance of the member's duties.

History: Laws 1996, ch. 57, § 10; 2013, ch. 110, § 7.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-10 NMSA 1978, as enacted by Laws 1981, ch. 249, § 10, relating to powers and duties of the regulation and licensing department, and § 10 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed terminology; in Subsection A, in the second sentence, changed "successors are" to "the member's successor is"; in Subsection C, changed "chairman" to "chair"; and in Subsection F, changed "his" to "the member's".

61-14B-11. Board powers and duties. (Repealed effective July 1, 2028.)

The board shall:

A. promulgate rules necessary to carry out the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978];

B. promulgate rules implementing continuing education requirements;

C. adopt a code of ethics that includes rules requiring audiologists and hearing aid dispensers, at the time of the initial examination for possible sale and fitting of a hearing aid if a hearing loss is determined, to inform each prospective purchaser about hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems. These rules shall be in accordance with the latest standards for accessible design adopted by the United States department of justice in accordance with the federal Americans with Disabilities Act of 1990, as amended;

D. conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

- E. investigate complaints against licensees by issuing investigative subpoenas prior to the issuance of a notice of contemplated action;
- F. establish fees for licensure;
- G. provide for the licensing and renewal of licenses of applicants; and
- H. promulgate rules that provide for expedited licensure and temporary permits for speech-language pathologists, audiologists or hearing aid dispensers.

History: Laws 1996, ch. 57, § 11; 2003, ch. 408, § 22; 2019, ch. 100, § 1; 2022, ch. 39, § 62.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-11 NMSA 1978, as enacted by Laws 1981, ch. 249, § 11, relating to disposition of funds collected under the Speech-Language Pathology and Audiology Act, and § 11 of that act enacted the above section, effective July 1, 1996.

Cross references. — For the federal Americans with Disabilities Act of 1990, see Titles 29, 42 and 47 of the U.S.C.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the speech-language pathology, audiology and hearing aid dispensing practices board is required to follow the provisions of the State Rules Act when promulgating rules; in Subsection A, deleted "adopt" and added "promulgate", after "rules", deleted "and regulations and

establish policy", and after "in accordance with the", deleted "Uniform Licensing" and added "State Rules"; in Subsection B, deleted "adopt" and added "promulgate"; and in Subsection H, deleted "adopt" and added "promulgate", and after "provide for", deleted "licensure by reciprocity, including" and added "expedited licensure and".

The 2019 amendment, effective June 14, 2019, required the speech-language pathology, audiology and hearing aid dispensing practices board to include in its code of ethics rules requiring audiologists and hearing aid dispensers to inform each prospective purchaser about hearing aid options that can provide a direct connection between the hearing aid and the assistive listening systems; and in Subsection C, after "adopt a code of ethics", added the remainder of the subsection.

The 2003 amendment, effective July 1, 2003, deleted former Subsection F, concerning hire of staff, and redesignated the subsequent subsections accordingly.

61-14B-12. Requirements for licensure; speech-language pathologist. (Repealed effective July 1, 2028.)

A license to practice as a speech-language pathologist shall be issued to a person who files a completed application, accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:

- A. holds at least a master's degree in speech pathology, speech-language pathology or communication disorders or an equivalent degree regardless of degree name and meets the academic requirements for certification by a national professional association; and either
- B. currently holds certification by a national professional association in the area for which the applicant is seeking licensure; or
- C. has completed the current academic, practicum and employment experience requirements for certification by a national professional association in the area for which the applicant is applying for license and has passed a recognized standard national examination in speech-language pathology.

History: Laws 1996, ch. 57, § 12; 1999, ch. 128, § 5; 2005, ch. 250, § 2; 2015, ch. 110, § 2.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-12 NMSA 1978, as enacted by Laws 1981, ch. 249, § 12, relating to licensing of applicants in speech-language pathology and in audiology, and Laws 1996, ch. 57, § 12 enacted a new section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended the licensure requirements for speech-language pathologists by replacing the required certification from a nationally recognized speech-language association with a "certification by a national professional association"; in Subsection A, after "certification by a", deleted "nationally recognized speech-language" and added "national professional", and after "association; and", added "either"; in Subsection B, after "currently holds", deleted "a

certificate of clinical competence from a nationally recognized speech-language" and added "certification by a national professional"; and in Subsection C, after "experience requirements for", deleted "a certificate of clinical competence from a nationally recognized speech-language" and added "certification by a national professional".

The 2005 amendment, effective June 17, 2005, deleted former references to audiology; provided that a license shall be issued to a person who certifies that the applicant is not guilty of any activities listed in Section 61-14B-21 NMSA 1978; deleted former Subsection B, which required the applicant to provide evidence that the applicant certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; deleted the provision in Subsection C that the applicant submit evidence of having completed the educational or experience requirements.

The 1999 amendment, effective June 18, 1999, deleted "nondispensing" preceding "audiologist" in the section

heading and the introductory language; and in Subsection B, substituted "Section 61-14B-21 NMSA 1978" for

"Section 21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act".

61-14B-12.1. Requirements for licensure; audiologist. (Repealed effective July 1, 2028.)

- A. A license to practice as an audiologist shall be issued to any person who:
- (1) files a completed application, accompanied by the required fees and documentation;
 - (2) certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and
 - (3) submits satisfactory evidence that the applicant:
 - (a) holds a doctor of audiology degree or an equivalent degree regardless of degree name and meets the academic requirements for certification by a national professional association, as determined by the board by rule;
 - (b) has passed a nationally recognized standard examination in audiology, if required by rule; and
 - (c) has earned certification by a national professional association as evidence that the applicant meets the clinical experience and examination requirements of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.
- B. A license to practice as an audiologist shall be issued to a person who:
- (1) files a completed application, accompanied by the required fees and documentation;
 - (2) certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978;
 - (3) submits satisfactory evidence that the applicant:
 - (a) holds a master's degree in audiology or communication disorders or an equivalent degree in audiology or communication disorders or an equivalent degree awarded prior to January 1, 2007; has met the academic requirements for certification by a national professional association; and has earned certification by a national professional association in the area in which the applicant is seeking licensure; or
 - (b) has completed the current academic, practicum and employment experience requirements for certification by a national professional association and has passed a nationally recognized standard examination in audiology; and
 - (4) provides evidence satisfactory to the board of at least six months' experience in the dispensing of hearing aids through practical examination or other methods as determined by the board in either a graduate training program or in a work or training experience.

History: Laws 2005, ch. 250, § 3; 2013, ch. 110, § 8; 2015, ch. 110, § 3. **Delayed repeals.** — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended the licensure requirements for audiologists by replacing the required certification from a nationally recognized hearing association with a certification by a national professional association; in Subparagraph A(3)(a), after "requirements for certification by a", deleted "nationally recognized hearing" and added "national professional", after "board by rule", deleted "and"; in Subparagraph A(3)(b), after "by rule", added "and"; added Subparagraph A(3)(c); in Paragraph (4) of Subsection A, deleted "provides official documentation from a nationally recognized hearing association, as determined by the board by rule", redesignated the remaining language from Paragraph (4) of Subsection A as Subparagraph A(3)(c), added "has earned certification by a national professional association", and after "Hearing Aid Dispensing Practices Act", deleted "and"; deleted Paragraph (5) of Subsection A; in Paragraph (2) of Subsection B, after "NMSA 1978", deleted "and"; in Subparagraph B(3)(a), after "2007", deleted "meets" and added "has met", after "requirements

for certification by a", deleted "nationally recognized hearing" and added "national professional", after "has earned a", deleted "a certificate of clinical competence from a nationally recognized hearing" and added "certification by a national professional"; in Subparagraph B(3)(b), after "experience requirements for", deleted "a certificate of competence in audiology from a nationally recognized hearing" and added "certification by a national professional"; redesignated Subparagraph B(3)(c) as Paragraph (4) of Subsection B, and after "training experience", deleted "and"; and deleted Subparagraph B(3)(d).

The 2013 amendment, effective June 14, 2013, changed the qualifications for licensure of audiologists; in Subsection A, Paragraph (3), Subparagraph (a), at the beginning of the sentence, after "holds a", deleted "master's degree in" and added "doctor of", after "doctor of audiology", added "degree", after "audiology degree or", deleted "communication disorders; or", after "equivalent degree", deleted "awarded prior to January 1, 2007" and added "regardless of degree name and", after "nationally recognized", deleted "speech-language or", after "hearing association", added "as determine by the board by rule", and after "board by rule; and", deleted "currently holds a certificate of clinical competence from a nationally

recognized speech-language or hearing association in the area that the applicant is seeking licensure; or", in Subparagraph (b), at the beginning of the sentence, after "has", deleted "completed the current academic, practicum and employment experience requirements for a certificate of clinical competence in audiology from a nationally recognized speech-language or hearing association and has" and after "recognized standard examination", deleted "or" and added "in audiology, if required by rule"; added Paragraphs (4) and (5); and in Subsection B, added the introductory sentence, in Paragraph (3), in Subparagraph (a), after "holds a", deleted "doctoral" and added "master's",

after "degree in audiology or", added "communication disorders or an", after "equivalent degree", deleted "regardless of degree name and" and added "in audiology or communication disorders or an equivalent degree awarded prior to January 1, 2007", after "nationally recognized", deleted "speech-language or", and after "hearing association; and", added the remainder of the sentence; in Subparagraph (b), after "practicum and employment", added "experience", after "experience requirements", added "for a certificate of competency in audiology from", and after "nationally recognized", deleted "speech-language or", and added Subparagraphs (c) and (d).

61-14B-13. Requirements for endorsement to dispense hearing aids as an otolaryngologist. (Repealed effective July 1, 2028.)

An endorsement to practice hearing aid dispensing shall be issued to a licensed otolaryngologist who files a completed application accompanied by the required fees and documentation and who:

A. provides evidence satisfactory to the board of at least six months' experience in the dispensing of hearing aids through practical examination or other methods as determined by the board in either a graduate training program or in a work or training experience;

B. maintains or occupies a business location, hospital, clinical medical practice or other facility where hearing aids are regularly dispensed;

C. passes the jurisprudence examination given by the board; and

D. certifies that the otolaryngologist is not guilty of any activities listed in Section 61-14B-21 NMSA 1978.

History: Laws 1996, ch. 57, § 13; 1999, ch. 128, § 6; 2015, ch. 110, § 4.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-13 NMSA 1978, as enacted by Laws 1981, ch. 249, § 13, relating to fees for speech-language pathologists or audiologists licenses, and Laws 1996, ch. 57, § 13 enacted a new section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2015 amendment, effective June 19, 2015, removed "audiologist" from the section of the law that provides for an endorsement to practice hearing aid dispensing; in the catchline, after "hearing aids as an", deleted "audiologist"; in the introductory sentence of the section,

after "issued to a licensed", deleted "audiologist or"; and in Subsection D, after "certifies that", deleted "he" and added "the otolaryngologist".

The 1999 amendment, effective June 18, 1999, rewrote this section to the extent that a detailed comparison is impracticable.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 4; 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 144.

Practicing medicine, surgery, dentistry, optometry, podiatry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

53 C.J.S. Licenses § 34.

61-14B-13.1. Requirements for bilingual-multicultural endorsement. (Repealed effective July 1, 2028.)

A bilingual-multicultural endorsement shall be issued to any person who:

A. files a completed application, accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:

(1) is eligible for and in the process of obtaining a license to practice as a speech-language pathologist;

(2) has completed the required education as determined by rule;

(3) has met experience requirements approved by the board; and

(4) has demonstrated proficiency in the specified language as determined by the board; or

B. files a completed application accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:

- (1) has an active license in good standing in the state of New Mexico as a speech-language pathologist;
 - (2) has a current bilingual endorsement from the public education department; or
 - (3) has a minimum of five years practicing with clients who utilize a language other than English and has demonstrated proficiency in the specified language as determined by the board;
- C. files a completed application, accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:
- (1) has a license in good standing in another state or country as a speech-language pathologist;
 - (2) has a minimum of five years practicing with clients who utilize a language other than English; and
 - (3) has demonstrated proficiency in the specified language as determined by the board.

History: Laws 2013, ch. 110, § 16; 2015, ch. 110, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, specified that each applicant for a bilingual-multicultural endorsement must submit satisfactory evidence that the applicant is eligible for and in the process of obtaining a license to practice as a speech-language pathologist and required applicants to meet requirements in at least one of the listed subsections; in Paragraph (1) of Subsection A, after "obtaining a license", added "to practice as a

speech-language pathologist"; in Paragraph (4) of Subsection A, after "board", added "or"; in the introductory paragraph of Subsection B, after "NMSA", added "1978"; in Paragraph (2) of Subsection B, after "department", added "or"; deleted the paragraph designation in Paragraph (4) of Subsection B and added the language from former Paragraph (4) of Subsection B to Paragraph (3) of Subsection B; in the introductory paragraph of Subsection C, after "NMSA", added "1978"; and in Paragraph (1) of Subsection C, after "has", deleted "an active" and added "a".

61-14B-14. Requirements for licensure by examination; hearing aid dispenser. (Repealed effective July 1, 2028.)

A. A license to practice as a hearing aid dispenser shall be issued to a person who files a completed application, passes the examination approved by the board, pays the required fees, provides required documentation and submits satisfactory evidence that the person:

- (1) is an audiologist or an otolaryngologist; or
- (2) is a person other than an audiologist or an otolaryngologist applying for a license pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;
- (3) has reached the age of majority and has at least a high school education or the equivalent;
- (4) has worked for no less than seven months under a training permit; and
- (5) certifies that the person is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978.

B. The examination for hearing aid dispenser shall be conducted by the board quarterly unless there are no applicants for examination.

C. The board:

- (1) shall provide procedures to ensure that examinations for licensure are offered as needed;
- (2) shall establish rules regarding the examination application deadline and other rules relating to the taking and retaking of licensure examinations;
- (3) shall determine a passing grade for the examination; and
- (4) may accept an applicant's examination scores used for national certification or other examination approved by the board.

History: Laws 1996, ch. 57, § 14; 1999, ch. 128, § 7; 2013, ch. 110, § 9.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-14 NMSA 1978, as enacted by Laws 1981, ch. 249, § 14, relating to denial, suspension and revocation of speech-language pathology or audiology licenses, and § 14 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed the qualifications for licensure as a hearing aid dispenser; in Paragraph (1) of Subsection A, after "audiologist", deleted "a clinical fellow in audiology" and in

Paragraph (2) of Subsection A, after "audiologist", deleted "a clinical fellow in audiology".

The 1999 amendment, effective June 18, 1999, deleted "a dispensing" preceding "audiologist" in Subsections A and A(1); in Subsection A, inserted "provides required" preceding "documentation"; in Subsection A(1), deleted "who does not meet the qualifications regarding a dispensing otolaryngologist set forth in Section 13 of the Speech-Language

Pathology, Audiology and Hearing Aid Dispensing Practices Act" following "otolaryngologist"; in Subsection A(2), deleted "a nondispensing audiologist" preceding "a clinical fellow in audiology"; in Subsection A(2)(a), inserted "has reached the age of majority and"; and in Subsection A(2)(c), substituted "Section 61-14B-21 NMSA 1978" for "Section 21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act".

61-14B-15. Requirements for licensure; clinical fellow of speech-language pathology. (Repealed effective July 1, 2028.)

A license to practice as a clinical fellow of speech-language pathology shall be issued to a person who files a completed application, pays the required fees, provides documentation and submits satisfactory evidence that the person:

A. has met all academic course work and practicum requirements for a master's degree in speech-language pathology, speech pathology or communication disorders for certification by a national professional association;

B. certifies that the person has received no reprimands of unprofessional conduct or incompetency;

C. applies for licensure under Section 61-14B-12 NMSA 1978 after completing the clinical fellowship year; and

D. has an appropriate supervisor, as defined in Section 61-14B-2 NMSA 1978.

History: Laws 1996, ch. 57, § 15; 2013, ch. 110, § 10; 2015, ch. 110, § 6.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-15 NMSA 1978, as enacted by Laws 1981, ch. 249, § 15, relating to penalties for violation of any of the provisions of the Speech-Language Pathology and Audiology Act, and Laws 1996, ch. 57, § 15 enacted a new section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended the certification requirements for an applicant for a license to practice as a clinical fellow of speech-language pathology; and in Subsection A, after "certification by a", deleted "nationally recognized speech-language or hearing" and added "national professional".

The 2013 amendment, effective June 14, 2013, eliminated the qualifications for licensure as a clinical fellow of audiology; in the title, after "pathology",

deleted "clinical fellow of audiology"; in the introductory sentence, after "speech-language pathology", deleted "or audiology" and after "complete application", deleted "passes the examination approve by the board prior to or within one year of applying for the examination"; in Subsection A, after "communication disorders", deleted "or audiology or both", deleted former Subsection B, which required the filing of a GFY plan; in Subsection C, after "Section", deleted "12 of the Speech Language Pathology, Audiology and Hearing Aid Dispensing Practices Act" and added "61-14B-12 NMSA 1978"; in Subsection D, at the beginning of the sentence, after "has", deleted "a GFY" and added "an appropriate", deleted former Paragraph (1), which required the applicant to be a licensed speech-language pathologist or audiologist, deleted former Paragraph (2) which required the applicant to be registered as a CFY supervisor, and added "as defined in Section 61-14B-2 NMSA 1978".

61-14B-15.1. Requirements for licensure; apprentice in speech and language. (Repealed effective July 1, 2028.)

A license to practice as an apprentice in speech and language shall be issued by the board to a person who files a completed application accompanied by the required fees and documentation and provides satisfactory evidence that the applicant:

A. is working toward full licensure pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

B. has a baccalaureate degree in speech-language pathology or communicative disorders or an equivalent degree or a baccalaureate degree in another field with thirty semester hours of credit in speech-language pathology or communicative disorder;

C. is enrolled in and successfully completes graduate classes in speech-language pathology, communicative disorders or a related field at a minimum rate of nine semester hours per year and is accepted into a master's level program in speech-language pathology or communicative disorders within two years of initial licensing;

- D. maintains a minimum of a 3.0 grade point average in the master's degree course and other work;
- E. is supervised by an appropriate supervisor, as defined in Section 61-14B-2 NMSA 1978; and
- F. has arranged for appropriate supervision to meet the supervision requirement defined by rule.

History: Laws 1999, ch. 128, § 8; 2005, ch. 250, § 4; 2013, ch. 110, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed the qualifications for licensure as an apprentice in speech and language; in Subsection C, after "communicative disorders", added "or a related field"; in Subsection E, after "supervised by", deleted "a person licensed as a speech-language pathologist who has a minimum of two years experience as a speech-language pathologist" and added "an appropriate supervisor, as defined in

Section 61-14B-2 NMSA 1978"; and in Subsection F, deleted "receives a minimum of ten percent direct supervision and ten percent indirect supervision" and added "has arranged for appropriate supervision to meet the supervision requirement defined by rule".

The 2005 amendment, effective June 17, 2005, deleted the provision that an a person have an equivalent degree regardless of the degree name; deleted the reference to audiology in Subsection B and added the provision that a person be enrolled and complete graduate classes and is accepted into a master's level program in speech-language pathology in Subsection C.

61-14B-16. Licensure under prior laws. (Repealed effective July 1, 2028.)

Any license issued in accordance with the Speech-Language Pathology and Audiology Act or the Hearing Aid Act prior to the effective date of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act shall be valid until the expiration date of the license.

History: 1996, ch. 57, § 16.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-16 NMSA 1978, as enacted by Laws 1981, ch. 249, § 16, relating to annual renewal of speech-language pathology or audiology licenses, and § 16 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

Compiler's notes. — The Speech-Language Pathology and Audiology Act and the Hearing Aid Act were the

precursors to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, and were compiled as Chapter 61, Article 14B and Chapter 61, Article 24A NMSA 1978, respectively, before their repeal in 1996.

The phrase "effective date of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act", referred to in this section, means July 1, 1996, the effective date of Laws 1996, ch. 57.

61-14B-16.1. Expedited licensure. (Repealed effective July 1, 2028.)

A. The board shall issue an expedited license without examination to a speech-language pathologist, audiologist or hearing aid dispenser licensed in another licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978. The board shall issue the expedited license as soon as practicable but no later than thirty days after the person files an application with the required fees and demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

B. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: Laws 2022, ch. 39, § 63.

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

61-14B-17. Hearing aid dispensing temporary trainee permits; issuance. (Repealed effective July 1, 2028.)

A. A person who does not meet the requirements for licensure without examination as an audiologist or otolaryngologist as set forth in Section 61-14B-13 NMSA 1978 or as a hearing aid dispenser as set forth in Section 61-14B-14 NMSA 1978 may apply for a temporary trainee permit. A temporary trainee permit shall be issued to a person who:

- (1) has reached the age of majority and has a high school education or the equivalent;
- (2) has identified a sponsor;
- (3) pays an application fee as determined by the board;
- (4) has not failed the licensing examination twice within a five-year period; and
- (5) certifies that the person is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978.

NMSA 1978.

B. A temporary trainee permit shall:

- (1) be valid for one year from the date of its issuance and is nonrenewable for a period of one year following its expiration; and
- (2) allow the person to complete a training period.

C. A person issued a temporary trainee permit may be eligible for licensure as a hearing aid dispenser upon:

- (1) the completion of a minimum of three hundred twenty hours of training, to be completed within a three-month period under the direct supervision of the sponsor;
- (2) the completion of five continuous months of full-time dispensing work, during which time all sales are approved by the sponsor prior to delivery; and
- (3) the sponsor approving all fittings, adjustments, modifications or repairs to hearing aids and earmolds.

D. An audiologist or otolaryngologist issued a temporary trainee permit may be eligible for licensure without examination as a hearing aid dispenser upon the sponsor providing direct supervision for a minimum of three months of all fittings, adjustments, modifications or repairs to hearing aids and earmolds.

History: Laws 1996, ch. 57, § 17; 1999, ch. 128, § 9; 2013, ch. 110, § 12.

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-17 NMSA 1978, as enacted by Laws 1990, ch. 16, § 4, relating to termination of the speech-language pathology and audiology advisory board, and § 17 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed the qualifications for issuance of a hearing aid dispensing temporary trainee permit; and in Subsection D, at the beginning of the sentence, after "An audiologist", deleted "clinical fellow in audiology".

The 1999 amendment, effective June 13, 1999, in Subsection A, deleted "a dispensing" preceding both "audiologist" and "otolaryngologist", substituted "Section 61-14B-13 NMSA 1978" for "Section 13 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act", and substituted "Section 61-14B-14 NMSA 1978" for "Section 14 of that act"; in Subsection A(1), inserted "has reached the age of majority and"; in Subsection A(2), deleted "as defined in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act" from the end; in Subsection A(5), substituted "Section 61-14B-21 NMSA 1978" for "Section 21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act"; and in Subsection D, substituted "An audiologist" for "A dispensing audiologist, nondispensing audiologist".

61-14B-18. Scope of hearing aid dispensing examination. (Repealed effective July 1, 2028.)

In preparing the hearing aid dispensing examination, the board shall use tests that demonstrate:

A. knowledge in the fitting and sale of hearing aids, including basic physics of sound, anatomy and physiology of the ear and the function of hearing aids; and

B. proficient use of techniques for the fitting of hearing aids, including:

- (1) pure-tone audiometry, including air conduction and bone conduction testing;
- (2) live voice or recorded voice speech audiometry, including speech reception threshold

and speech recognition score tests;

- (3) masking when indicated;
- (4) recording and evaluation of audiograms and speech audiometry for determining proper selection, fitting and adjustment of hearing aids;
- (5) taking earmold impressions; and
- (6) analyzing hearing aid function, modification and general service.

History: Laws 1996, ch. 57, § 18; 2013, ch. 110, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, required the board to test proficiency in fitting hearing aids; and in Paragraph (4) of Subsection B, after "proper selection", added "fitting".

61-14B-19. License renewal. (Repealed effective July 1, 2028.)

A. Each licensee shall renew the licensee's license biennially by submitting a renewal application as provided for in the board's regulations. The board may require proof of continuing education as a requirement for renewal. The board may establish a method to provide for staggered biennial terms. The board may authorize license renewal for one year to establish the renewal cycle.

B. A sixty-day grace period shall be allowed to each licensee after each licensing period. A license may be renewed during the grace period upon payment of a renewal fee and a late fee as prescribed by the board.

C. Any license not renewed by the end of the grace period will be considered expired and the licensee shall not be eligible to practice within the state until the license is renewed. The board shall develop rules regarding requirements for renewal of an expired license and may require the licensee to reapply as a new applicant.

D. Clinical fellow licenses may be renewed annually for no more than three years; provided the clinical fellow has submitted evidence of passing a recognized standard national examination in speech-language pathology prior to or within the clinical fellow's second year of the CFY. The CFY license shall not be renewed for a second year without evidence of passing a recognized standard national examination in speech-language pathology.

E. An apprentice in speech-language pathology shall renew the apprentice's license annually; provided that the apprentice is accepted into a master's-level program in speech-language pathology or communicative disorders within two years of initial licensing.

F. The board may issue rules providing for inactive status of licenses.

History: Laws 1996, ch. 57, § 19; 2013, ch. 110, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, provided for biennial renewal of licenses; in Subsection A, after "renew the licensee's license", deleted "every year" and added "biennially" and added the third sentence;

in Subsection D, in the first sentence, after "may be renewed", added "annually" and in the second sentence, after "shall not be renewed", added "for a second year" and after "national examination in", deleted "either", and after "speech-language pathology", deleted "or audiology or both"; and added Subsection E.

61-14B-20. Fees. (Repealed effective July 1, 2028.)

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable fees for applications, licenses, renewal of licenses, exams, penalties and administrative fees. The license and license renewal fees shall not exceed:

- A. one hundred dollars (\$100) for clinical fellows and apprentices in speech and language;
- B. two hundred dollars (\$200) for audiologists or speech-language pathologists;
- C. six hundred dollars (\$600) for hearing aid dispensers;
- D. four hundred dollars (\$400) for examinations;
- E. one hundred dollars (\$100) for late renewal fees;
- F. four hundred dollars (\$400) for hearing aid dispensing endorsement;
- G. five hundred dollars (\$500) for a hearing aid dispenser trainee license, which fee includes examination, both written and practical;
- H. one hundred dollars (\$100) for bilingual-multicultural endorsement; and
- I. reasonable administrative fees.

History: Laws 1996, ch. 57, § 20; 1999, ch. 128, § 10; 2013, ch. 110, § 15; 2020, ch. 6, § 41.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in the introductory paragraph, added "Except as provided in Section 61-1-34 NMSA 1978";

The 2013 amendment, effective June 14, 2013, increased the renewal fees; in Subsection A, at the beginning of the sentence, deleted "fifty dollars (\$50.00)" and added "one hundred dollars" ("(\$100)"; in Subsection B, at the beginning of the sentence, deleted "one hundred dollars (\$100)" and added "two hundred dollars" ("(\$200)"; in

Subsection C, at the beginning of the sentence, deleted "three hundred dollars (\$300)" and added "six hundred dollars" ("(\$600)"; in Subsection D, at the beginning of the sentence, deleted "two hundred dollars (\$200)" and added "four hundred dollars" ("(\$400)"; in Subsection F, at the beginning of the sentence, deleted "two hundred dollars (\$200)" and added "four hundred dollars" ("(\$400)"; and added Subsection H.

The 1999 amendment, effective June 13, 1999, in Subsection A, substituted "apprentices in speech and language" for "hearing aid dispenser trainees"; in Subsection B, deleted "nondispensing" preceding "audiologists"; in Subsection C, deleted "or dispensing audiologists" following "hearing aid dispensers"; added Subsections F and G; and redesignated the former Subsection F as Subsection H.

61-14B-21. Disciplinary proceedings; judicial review. (Repealed effective July 1, 2028.)

A. The board may deny, revoke, suspend or impose conditions upon a license held or applied for under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act in accordance with the procedures set forth in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] upon findings by the board that the licensee or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license;
- (2) has been convicted of a felony. A certified copy of the record of conviction shall be conclusive evidence of the conviction;
- (3) is guilty of incompetence;
- (4) is guilty of unprofessional conduct;
- (5) is selling or fitting the first hearing aid of a child under sixteen years of age who has not been examined and cleared for the hearing aid by an otolaryngologist or a dispensing audiologist who has earned certification by a national professional association;
- (6) is selling or fitting a hearing aid on a person who has not been tested, except for replacement aids;
- (7) uses untruthful or misleading advertising;
- (8) makes any representation as being a medical doctor when the licensee or applicant is not a licensed medical doctor;
- (9) is addicted to the use of habit-forming drugs or is addicted to a substance to such a degree as to render the licensee or applicant unfit to practice as a speech-language pathologist, dispensing or nondispensing audiologist or hearing aid dispenser;
- (10) is guilty of unprofessional conduct, as defined by regulation of the board;
- (11) is guilty of a violation of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];
- (12) has violated a provision of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;
- (13) is guilty of willfully or negligently practicing beyond the scope of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;
- (14) is guilty of aiding or abetting the practice of speech-language pathology, audiology or hearing aid dispensing by a person not licensed by the board;
- (15) is guilty of practicing without a license in violation of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act and its regulations; or
- (16) has had a license, certificate or registration to practice speech-language pathology, audiology or hearing aid dispensing revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts described in this section. A certified copy of the record of the jurisdiction taking such disciplinary action will be conclusive evidence thereof.

B. Disciplinary proceedings may be initiated by a person filing a sworn complaint. A person filing a sworn complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

History: Laws 1996, ch. 57, § 21; 2015, ch. 110, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended the disciplinary proceedings provision of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act by authorizing the speech language pathology, audiology and hearing aid dispensing practices board to deny, revoke, suspend or impose conditions upon a license if the licensee sells or fits the first hearing aid of a child under sixteen years of age who has not been examined and cleared for a hearing aid by an otolaryngologist or a dispensing audiologist who has earned "certification by a national professional association"; the law previously required clearance from both an otolaryngologist and a dispensing audiologist; in the introductory sentence of Subsection A, after "conditions upon", deleted "any" and added "a"; in Paragraph (5) of Subsection A, after "first hearing aid of", deleted "any" and added "a",

after "otolaryngologist", deleted "and" and added "or", after "dispensing audiologist who", deleted "is certified competent by a nationally recognized speech-language or hearing association or holds equivalent certification" and added "has earned certification by a national professional association"; in Paragraph (6) of Subsection A, after "hearing aid on", deleted "any" and added "a"; in Paragraph (8) of Subsection A, after "(8)", deleted "is representing himself as" and added "makes any representation as being", and after "medical doctor when", deleted "he" and added "the licensee or applicant"; in Paragraph (9) of Subsection A, after the second occurrence of "addicted to", deleted "any" and added "a", and after "to render", deleted "him" and added "the licensee or applicant"; in Paragraph (11) of Subsection A, after "guilty of", deleted "any" and added "a"; in Paragraph (12) of Subsection A, after "violated", deleted "any" and added "a"; and in Subsection B, after "initiated by", deleted "any" and added "a", and after "complaint.", deleted "Any" and added "A".

61-14B-22. Penalties. (Repealed effective July 1, 2028.)

A. Any person who fails to furnish the board, its investigators or representatives with information requested by the board is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for a period of one year or both.

B. Any person who violates any provision of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000) or imprisonment for a period of one year or both.

History: Laws 1996, ch. 57, § 22.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

61-14B-23. Criminal Offender Employment Act. (Repealed effective July 1, 2028.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

History: Laws 1996, ch. 57, § 23.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

61-14B-24. Fund established. (Repealed effective July 1, 2028.)

A. There is created in the state treasury the "speech-language pathology, audiology and hearing aid dispensing practices board fund".

B. All money received by the board under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act shall be deposited with the state treasurer for credit to the speech-language pathology, audiology and hearing aid dispensing practices board fund. The state treasurer shall invest the fund as other state funds are invested. All balances in the fund shall remain in the fund and shall not revert to the general fund.

C. Money in the speech-language pathology, audiology and hearing aid dispensing practices board fund is appropriated to the board and shall be used only for the purpose of carrying out the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

History: Laws 1996, ch. 57, § 24.

Delayed repeals. — For delayed repeal of this section, see 61-14B-25 NMSA 1978.

61-14B-25. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The speech-language pathology, audiology and hearing aid dispensing practices board is terminated on July 1, 2027 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act until July 1, 2028. Effective July 1, 2028, the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act is repealed.

History: Laws 1996, ch. 57, § 25; 1997, ch. 46, § 17; 2005, ch. 208, § 12; 2015, ch. 119, § 15; 2021, ch. 50, § 11.

The 2021 amendment, effective June 18, 2021, extended the sunset date for the speech-language pathology, audiology and hearing aid dispensing practices board, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the speech-language

pathology, audiology and hearing aid dispensing practices board to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences.

ARTICLE 14C

Medical Assistants

Sec.

61-14C-1. Notice; penalty.

61-14C-1. Notice; penalty.

A. Any physician employing or sponsoring a physician's assistant pursuant to Section 61-6-6 NMSA 1978 or any osteopathic physician employing or sponsoring an osteopathic physician's assistant pursuant to the Osteopathic Physicians' Assistants Act [repealed] shall post a notice of such employment in a prominent place calculated to inform any member of the public entering the office of the physician or osteopathic physician. The notice shall further state the basis upon which charges for services of the assistant are calculated and how they differ, if at all, from the charges for services of the physician or osteopathic physician.

B. Any physician or osteopathic physician violating the provisions of Subsection A of this section is guilty of a petty misdemeanor.

History: Laws 1981, ch. 251, § 1.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2016, ch. 90, § 29 repealed the Osteopathic Physicians' Assistants Act, §§ 61-10A-1 to 61-10A-7 NMSA 1978, effective July 1, 2016.

Cross references. — For penalties for misdemeanors, see 31-19-1 NMSA 1978.

ARTICLE 14D

Athletic Trainer Practice

Sec.

- 61-14D-1. Short title. (Repealed effective July 1, 2028.)
- 61-14D-2. Purpose. (Repealed effective July 1, 2028.)
- 61-14D-3. Definitions. (Repealed effective July 1, 2028.)
- 61-14D-4. License required. (Repealed effective July 1, 2028.)
- 61-14D-4.1. Expedited licensure. (Repealed effective July 1, 2028.)
- 61-14D-5. Exemptions. (Repealed effective July 1, 2028.)
- 61-14D-6. Scope of practice. (Repealed effective July 1, 2028.)
- 61-14D-7. Board created. (Repealed effective July 1, 2028.)
- 61-14D-8. Department duties. (Repealed effective July 1, 2028.)
- 61-14D-9. Board powers and duties. (Repealed effective July 1, 2028.)
- 61-14D-10. Requirements for licensure. (Repealed effective July 1, 2028.)
- 61-14D-11. Examinations. (Repealed effective July 1, 2028.)

Sec.

- 61-14D-12. Provisional permit. (Repealed effective July 1, 2028.)
- 61-14D-13. License renewal. (Repealed effective July 1, 2028.)
- 61-14D-14. Fees. (Repealed effective July 1, 2028.)
- 61-14D-15. Criminal Offenders Employment Act. (Repealed effective July 1, 2028.)
- 61-14D-16. Disciplinary proceedings; judicial review; application of Uniform Licensing Act. (Repealed effective July 1, 2028.)
- 61-14D-17. Penalties. (Repealed effective July 1, 2028.)
- 61-14D-18. Fund established. (Repealed effective July 1, 2028.)
- 61-14D-19. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

61-14D-1. Short title. (Repealed effective July 1, 2028.)

Chapter 61, Article 14D NMSA 1978 may be cited as the "Athletic Trainer Practice Act".

History: 1978 Comp., § 61-14D-1, enacted by Laws 1993, ch. 325, § 1; 2000, ch. 4, § 11.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-1 NMSA 1978, as enacted by Laws 1983, ch. 147, § 1, providing the title of the Athletic Trainer Act, and § 1 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2000 amendment, effective February 15, 2000, substituted "Chapter 61, Article 14D NMSA 1978" for "Sections 1 through 19 of this act".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Medical malpractice liability of sports medicine care providers for injury to, or death of, athlete, 33 A.L.R.5th 619.

61-14D-2. Purpose. (Repealed effective July 1, 2028.)

In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of athletic training, it is necessary to provide laws and regulations to govern the granting of the privilege to practice as an athletic trainer. The primary responsibility and obligation of the athletic trainer practice board is to protect the public.

History: 1978 Comp., § 61-14D-2, enacted by Laws 1993, ch. 325, § 2.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repeals former section 61-14D-2 NMSA 1978, as enacted by Laws 1983, ch. 147, § 2, containing definitions, and § 2 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits, §§ 4, 5, 14, 34 to 36, 39, 45 to 47.

53 C.J.S. Licenses §§ 5, 7, 30, 34 to 41, 64.

61-14D-3. Definitions. (Repealed effective July 1, 2028.)

As used in the Athletic Trainer Practice Act:

A. "athlete" means a person trained to participate in exercise requiring physical agility and stamina;

- B. "athletic trainer" means a person who, with the advice and consent of a licensed physician, practices the treatment, prevention, care and rehabilitation of injuries incurred by athletes;
- C. "board" means the athletic trainer practice board;
- D. "clinical assessment" means obtaining a history of an athletic injury, inspection and palpation of an injured part and associated structures and performance of testing techniques related to stability and function to determine the extent of an injury;
- E. "department" means the regulation and licensing department;
- F. "district" means an area having the same boundaries as a congressional district in the state;
- G. "emergency care" means the application of first aid, determination of whether an injury is life-threatening and referral to an appropriately licensed health care provider if an injury requires further definitive care or the injury or condition is outside an athletic trainer's scope of practice;
- H. "licensed physician" means a chiropractor, osteopath or physician licensed pursuant to Article 4, 6 or 10 of Chapter 61 NMSA 1978;
- I. "preventive services" means treatment of injuries through pre-activity screening and evaluation, educational programs, application of commercial products, use of protective equipment and physical conditioning and reconditioning programs; and
- J. "therapeutic intervention and rehabilitation" means treatment of injuries through the application of exercise, the use of physical modalities such as heat, light, sound, cold, electricity or mechanical devices, therapeutic activities, preventive services and standard reassessment techniques and procedures in accordance with established, written athletic training service plans and upon the order or protocol of a licensed physician.

History: 1978 Comp., § 61-14D-3, enacted by Laws 1993, ch. 325, § 3; 2017, ch. 86, § 1.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-3 NMSA 1978, as enacted by Laws 1983, ch. 147, § 3, creating the athletic trainers advisory board, and § 3 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2017 amendment, effective June 16, 2017, defined "clinical assessment", "emergency care", "preventive services", and "therapeutic intervention and rehabilitation"; added a new Subsection D and redesignated former Subsections D and E as Subsections E and F, respectively; added Subsection G; redesignated former Subsection F as Subsection H; in Subsection H, after "pursuant to", deleted "Articles" and added "Article"; and added Subsections I and J.

61-14D-4. License required. (Repealed effective July 1, 2028.)

- A. Unless licensed pursuant to the Athletic Trainer Practice Act, no person shall:
 - (1) practice as an athletic trainer as defined in the Athletic Trainer Practice Act;
 - (2) use the title or represent himself as a licensed athletic trainer or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as an athletic trainer; or
 - (3) advertise, hold out to the public or represent in any manner that he is authorized to practice athletic training in the jurisdiction.

History: 1978 Comp., § 61-14D-4, enacted by Laws 1993, ch. 325, § 4.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-4 NMSA 1978, as enacted by Laws 1983, ch. 147, § 4, concerning meetings, officers, and support personnel of the athletic trainers advisory board, and § 4 of ch. 325 enacted the above

section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

61-14D-4.1. Expedited licensure. (Repealed effective July 1, 2028.)

- A. The board shall issue an expedited license without examination to an athletic trainer licensed in another licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978. The board shall issue the expedited license as soon as practicable but no later than thirty days after the person files an application with the required fees and demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing

jurisdiction. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

B. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: Laws 2022, ch. 39, § 65.

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

61-14D-5. Exemptions. (Repealed effective July 1, 2028.)

A. Nothing in the Athletic Trainer Practice Act shall be construed:

(1) as preventing qualified members of other recognized professions that are licensed, certified or regulated under New Mexico law or regulation from rendering services within the scope of their license, certification or regulation, provided they do not represent themselves as licensed athletic trainers;

(2) as preventing the practice of athletic training by a student enrolled in a program of study at a nationally accredited institution approved by the board; provided that the student renders services pursuant to a course of instruction or assignment under the supervision of a licensed athletic trainer; or

(3) as requiring any school district to employ an athletic trainer.

History: 1978 Comp., § 61-14D-5, enacted by Laws 1993, ch. 325, § 5.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-5 NMSA 1978, as amended by Laws 1987, ch. 329, § 12, concerning the powers of the athletic trainers advisory board, and § 5 of ch.

325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

Compiler's notes. — As enacted by Laws 1993, ch. 325, § 5 this section did not contain a Subsection B.

61-14D-6. Scope of practice. (Repealed effective July 1, 2028.)

The practice of athletic training includes preventive services, emergency care, clinical assessment, therapeutic intervention and rehabilitation of injuries and medical conditions of athletes. Athletic trainers act as allied medical providers through collaboration with licensed physicians, pursuant to the written prescription, standing order or protocol of a licensed physician.

History: 1978 Comp., § 61-14D-6, enacted by Laws 1993, ch. 325, § 6; 2017, ch. 88, § 2.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-6 NMSA 1978, as amended by Laws 1989, ch. 40, § 1, specifying examination and license fees, and § 6 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2017 amendment, effective June 16, 2017, amended the scope of practice of athletic trainers to add

clinical assessment and therapeutic intervention of athletes; after "athletic training includes", deleted "the prevention, care and rehabilitation of athlete's injuries. Athletic trainers may evaluate and treat athletes" and added "preventive services, emergency care, clinical assessment, therapeutic intervention and rehabilitation of injuries and medical conditions of athletes. Athletic trainers act as allied medical providers through collaboration with licensed physicians", and after "protocol of a licensed physician", deleted the remainder of the section, which provided for methods of treatment and prohibited treatment of athletes injured in a non-athletic setting.

61-14D-7. Board created. (Repealed effective July 1, 2028.)

A. There is created the "athletic trainer practice board".

B. The board shall be administratively attached to the department.

C. The board shall consist of five members who are United States citizens and have been New Mexico residents for at least three years prior to their appointment. Members of the board shall be appointed by the governor for staggered terms of three years each. Three of the members shall be athletic trainers licensed pursuant to provisions of the Athletic Trainer Practice Act. One member shall be employed by a high school. Two members shall represent the public and have no financial interest, direct or indirect, in the occupation regulated. One public member shall be from any area north of interstate 40 in the state and one public member shall be from any area south of interstate 40 in the state. Board members shall reside in separate districts. Board members shall serve until their successors have been appointed.

D. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

E. A simple majority of the board members currently serving shall constitute a quorum of the board.

F. The board shall meet at least once a year and at such other times as it deems necessary.

G. No board member shall serve more than two consecutive terms. Any member failing to attend three meetings, after proper notice, shall automatically be recommended to be removed as a board member, unless excused for reasons set forth in board regulations.

H. The board shall elect a chairman and other officers as deemed necessary to administer its duties.

History: 1978 Comp., § 61-14D-7, enacted by Laws 1993, ch. 325, § 7; 2005, ch. 125, § 1.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-7 NMSA 1978, as enacted by Laws 1983, ch. 147, § 7, concerning the qualifications of applicants for an athletic trainer license, and § 7 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, provided in Subsection C that board members shall be United States citizens and residents of New Mexico for at least three years, that one member shall be employed by a high school and that members shall reside in separate districts.

61-14D-8. Department duties. (Repealed effective July 1, 2028.)

The department shall assist the board in administering the Athletic Trainer Practice Act and shall:

- A. process applications and conduct and review the required examinations;
- B. issue licenses and provisional permits to applicants who meet the requirements of the Athletic Trainer Practice Act;
- C. administer and coordinate the provisions of the Athletic Trainer Practice Act and investigate persons engaging in practices that may violate the provisions of that act;
- D. conduct any required examinations of applicants;
- E. hire staff as may be necessary to carry out the actions of the board;
- F. maintain board records, including financial records; and
- G. maintain a current register of licensees as a matter of public record.

History: 1978 Comp., § 61-14D-8, enacted by Laws 1993, ch. 325, § 8; 2005, ch. 125, § 2; 2022, ch. 39, § 64.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-8 NMSA 1978, as enacted by Laws 1983, ch. 147, § 8, providing an exemption from the application of the Athletic Trainer Act, and § 8 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2022 amendment, effective May 18, 2022, required the regulation and licensing department to assist

the athletic trainer practice board in administering the Athletic Trainer Practice Act; in the introductory clause, after "The department", deleted "in consultation with" and added "shall assist", and after "the board", added "in administering the Athletic Trainer Practice Act and"; and in Subsection C, after "administer", added "and", and after "coordinate", deleted "and enforce".

The 2005 amendment, effective June 17, 2005, provided in Subsection A that the department shall process applications and conduct examinations and added Subsection G to require the department to provide a current register of licensees as a matter of public record.

61-14D-9. Board powers and duties. (Repealed effective July 1, 2028.)

The board:

- A. shall select and provide for the administration of examinations for licensure no less often than semiannually;
- B. shall establish the passing scores for the New Mexico laws and regulation examinations;
- C. shall determine eligibility of individuals for licensure;
- D. shall set fees for administrative services and licenses as authorized by the Athletic Trainer Practice Act, and authorize all disbursements necessary to carry out the provisions of that act;
- E. shall review license applications and recommend approval or disapproval;
- F. may adopt and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules and regulations necessary to carry out the provisions of the Athletic Trainer Practice Act;
- G. may take any disciplinary action allowed by and in accordance with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978];
- H. may conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license;
- I. may adopt a code of ethics; and
- J. may require and establish criteria for continuing education.

History: 1978 Comp., § 61-14D-9, enacted by Laws 1993, ch. 325, § 9; 2005, ch. 125, § 3.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-9 NMSA 1978; as enacted by Laws 1983, ch. 147, § 9, stating that the Athletic Trainer Act does not require school districts to employ athletic trainers, and § 9 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, added Subsections A through E, G and J to provide that the board provide examinations no less than semiannually, establish passing scores, determine eligibility for licensure, set fees for administrative services and licenses, authorize disbursements, review license applications and recommend approval or disapproval, take disciplinary action, and require and establish criteria for continuing education.

61-14D-10. Requirements for licensure. (Repealed effective July 1, 2028.)

The board shall issue a license to practice as an athletic trainer to any person who files a completed application, accompanied by the required fees and documentation and who submits satisfactory evidence that the applicant:

- A. has completed a baccalaureate degree;
- B. is currently competent in cardiopulmonary resuscitation and in the use of automated electrical defibrillator units; and
- C. demonstrates professional competence by passing the national certification examination recognized by the board and an examination on New Mexico laws and regulations pertaining to athletic trainers prescribed by the board.

History: 1978 Comp., § 61-14D-10, enacted by Laws 1993, ch. 325, § 10; 2005, ch. 125, § 4.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-10 NMSA 1978, as enacted by Laws 1983, ch. 147, § 10, concerning the issuance of licenses to persons currently engaged as trainers, and § 10 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, provided that the board may issue a license to an applicant who has completed a baccalaureate degree, is currently competent in cardiopulmonary resuscitation and in the use of automated electrical defibrillator units and demonstrates professional competence by passing an examination.

61-14D-11. Examinations. (Repealed effective July 1, 2028.)

Applicants shall demonstrate professional competency by passing the New Mexico laws and regulations examination. The board shall establish the board-approved examinations application deadline and the requirements for re-examination if the applicant has failed the examination.

History: 1978 Comp., § 61-14D-11, enacted by Laws 1993, ch. 325, § 11; 2005, ch. 125, § 5.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-11 NMSA 1978, as enacted by Laws 1983, ch. 147, § 11, concerning hearings and appeals, and § 11 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, deleted former Subsections A through D and provided that applicants shall demonstrate professional competency by passing an examination and that the board shall establish examination application deadlines and the requirement for reexamination.

61-14D-12. Provisional permit. (Repealed effective July 1, 2028.)

A. An applicant for licensure who has passed the New Mexico state law and regulations examination may obtain a provisional permit to engage in the practice of athletic training; provided that the applicant meets all licensure requirements except for passing the national certification exam for athletic trainers. The applicant must provide proof of registration to take the national certification examination.

B. The provisional permit is valid until the results of the national certification examination have been received in the board office.

C. If the applicant should fail or not take the national certification examination, upon proof of re-registration for the national certification examination, the applicant will be issued a second provisional permit. No more than two provisional permits shall be issued to an individual.

History: 1978 Comp., § 61-14D-12, enacted by Laws 1993, ch. 325, § 12; 2005, ch. 125, § 6.

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-12 NMSA 1978, as enacted by Laws 1983, ch. 147, § 12, authorizing expenditure of funds by the regulation and licensing department for implementing the Athletic Trainer Act, and § 12 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, revised Subsection A to provide that an applicant who has

passed the examination may obtain a provisional permit to engage in athletic training if the applicant meets all licensure requirements except for passing the national examination and the applicant provides proof of registration to take the national examination, provided in Subsection B that the provisional permit is valid until the national examination has been received by the board, and provided in Subsection C that if the applicant fails or does not take the national examination, the board may issue a second provisional permit upon proof that the applicant has re-registered for the national examination.

61-14D-13. License renewal. (Repealed effective July 1, 2028.)

A. Each licensee shall renew his license annually by submitting a renewal application on a form provided by the board.

B. The board may require proof of continuing education, current cardiopulmonary resuscitation certification and certification in the use of automated electrical defibrillator units as a requirement for renewal.

C. If a license is not renewed by the expiration date, the license will be considered expired and the licensee shall refrain from practicing. A licensee may renew a license within the allotted grace period by submitting to the board payment of the renewal fee and late fee and proof of compliance with all renewal requirements. Upon receipt of payment and proof of meeting any continuing education requirements by the board, the licensee may resume practice. Failure to receive renewal notice and application for renewal of license from the board does not excuse a licensed athletic trainer from the requirements for renewal.

D. A license granted by the board shall automatically expire if the licensee fails to apply for the renewal license provided for in this section within thirty days of the renewal deadline. Reinstatement of an expired license will require the licensee to reapply and meet all current standards for licensure.

History: 1978 Comp., § 61-14D-13, enacted by Laws 1993, ch. 325, § 13; 2005, ch. 125, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, provided in Subsection B that the board may require certification in the use of automated electrical defibrillator units; added Subsection C to provide that if a license is not

renewed by the expiration date, the license will be considered expired, that a licensee may renew a license within the grace period upon payment of the fees and proof of compliance with renewal requirements and that the failure to receive a renewal notice from the board does not

excuse the licensee from the requirements for renewal; and added Subsection D to provide that a license automatically expires if the licensee fails to apply for renewal within thirty days after the renewal deadline.

61-14D-14. Fees. (Repealed effective July 1, 2028.)

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable fees, not to exceed one hundred dollars (\$100) each for applications, licenses, expedited licenses, provisional permits, renewal of licenses, placement on inactive status and necessary and reasonable administrative fees and initial prorated licensing fees.

History: 1978 Comp., § 61-14D-14, enacted by Laws 1993, ch. 325, § 14; 2005, ch. 125, § 8; 2020, ch. 6, § 42; 2022, ch. 39, § 66.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2022 amendment, effective May 18, 2022, placed a limit on the amount of fees for applications, licenses, expedited licenses, provisional permits, renewal licenses, placement on inactive status and necessary and reasonable administrative fees and initial prorated licensing

fees; and after "schedule of reasonable fees", added "not to exceed one hundred dollars (\$100) each", and after "applications, licenses", added "expedited licenses".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

The 2005 amendment, effective June 17, 2005, required the board to establish prorated licensing fees.

61-14D-15. Criminal Offenders Employment Act. (Repealed effective July 1, 2028.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Athletic Trainer Practice Act.

History: 1978 Comp., § 61-14D-15, enacted by Laws 1993, ch. 325, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

61-14D-16. Disciplinary proceedings; judicial review; application of Uniform Licensing Act. (Repealed effective July 1, 2028.)

A. In accordance with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, revoke or suspend any license held or applied for under the Athletic Trainer Practice Act upon findings by the board that the licensee or applicant:

- (1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure a license provided for in the Athletic Trainer Practice Act;
- (2) has been convicted of a felony. A certified copy of the record of conviction shall be conclusive evidence of such conviction;
- (3) is guilty of incompetence;
- (4) is guilty of unprofessional conduct;
- (5) is guilty of dispensing, administering, distributing or using a controlled substance, as defined in the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978], or is addicted to any vice to such a degree that it renders him unfit to practice as an athletic trainer;
- (6) has violated any provisions of the Athletic Trainer Practice Act;
- (7) is guilty of willfully or negligently practicing beyond the scope of athletic training as defined in the Athletic Trainer Practice Act;
- (8) is guilty of aiding or abetting the practice of athletic training by a person not licensed by the board;
- (9) is guilty of practicing without a provisional permit or license in violation of the Athletic Trainer Practice Act and its regulations; or

(10) has had a license, certificate or registration to practice as an athletic trainer revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking such disciplinary action shall be conclusive evidence of the revocation, suspension or denial.

B. Disciplinary proceedings may be instituted by the sworn complaint of any person and shall conform to the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. Any person filing a sworn complaint shall be immune from liability arising out of civil action, provided the complaint is filed in good faith and without actual malice.

History: 1978 Comp., § 61-14D-16, enacted by Laws 1993, ch. 325, § 16; 2005, ch. 125, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, provided in Subsection A(1) that the board may take disciplinary action if a licensee or an applicant is guilty of misrepresentation in procuring a license.

61-14D-17. Penalties. (Repealed effective July 1, 2028.)

Any person who violates any provision of the Athletic Trainer Practice Act is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978.

History: 1978 Comp., § 61-14D-17, enacted by Laws 1993, ch. 325, § 17.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

61-14D-18. Fund established. (Repealed effective July 1, 2028.)

A. There is created in the state treasury the "athletic trainer practice board fund".

B. All money received by the board under the Athletic Trainer Practice Act shall be deposited with the state treasurer for credit to the fund. The state treasurer shall invest the fund as other state funds are invested. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary. Balances credited to the fund shall remain in the fund and shall not revert to the general fund.

C. Money in the fund is appropriated to the board and shall be used only for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Athletic Trainer Practice Act.

History: 1978 Comp., § 61-14D-18, enacted by Laws 1993, ch. 325, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-14D-19 NMSA 1978.

61-14D-19. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The athletic trainer practice board is terminated on July 1, 2027 pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Athletic Trainer Practice Act until July 1, 2028. Effective July 1, 2028, Chapter 61, Article 14D NMSA 1978 is repealed.

History: 1978 Comp., § 61-14D-19, enacted by Laws 1993, ch. 325, § 19; 2000, ch. 4, § 12; 2005, ch. 208, § 13; 2015, ch. 119, § 16; 2021, ch. 50, § 12.

The 2021 amendment, effective June 18, 2021, extended the sunset date for the athletic trainer practice board; after the first occurrence of "July 1", changed "2021" to "2027" and changed "2022" to "2028" throughout.

The 2015 amendment, effective June 19, 2015, extended the termination date for the athletic trainer practice board to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 2000 amendment, effective February 15, 2000, substituted "July 1, 2005" for "July 1, 1999" in the first sentence, substituted "July 1, 2006" for "July 1, 2001" in the second sentence, and rewrote the last sentence which read "Effective July 1, 2000, the Athletic Trainer Practice Act is repealed".

ARTICLE 14E

Medical Imaging and Radiation Therapy Health and Safety

Sec.

- 61-14E-1. Short title.
- 61-14E-2. Purpose of act.
- 61-14E-3. Administration; enforcement.
- 61-14E-4. Definitions.
- 61-14E-5. Board; powers; duties.
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- 61-14E-7. Licensure; exceptions.

Sec.

- 61-14E-7.1. Emergency provision.
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- 61-14E-9. Fees for licensure.
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- 61-14E-11. Suspension; revocation; application of Uniform Licensing Act.
- 61-14E-12. Violations; penalties.

61-14E-1. Short title.

Chapter 61, Article 14E NMSA 1978 may be cited as the "Medical Imaging and Radiation Therapy Health and Safety Act".

History: Laws 1983, ch. 317, § 1; 2009, ch. 106, § 1.

The 2009 amendment, effective June 19, 2009, changed the reference of the act to the Chapter and Article of NMSA 1978 and changed the name of the act from

"Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act".

61-14E-2. Purpose of act.

The purpose of the Medical Imaging and Radiation Therapy Health and Safety Act is to maximize the protection practicable for the citizens of New Mexico from ionizing and non-ionizing radiation in the practice of medical imaging. This purpose is effectuated by establishing requirements for appropriate education and training of persons operating medical equipment emitting ionizing and non-ionizing radiation, establishing standards of education and training for the persons who administer medical imaging and radiation therapy procedures and providing for the appropriate examination and licensure of those persons.

History: Laws 1983, ch. 317, § 2; 2009, ch. 106, § 2.

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; after "ionizing" in two places, added "or non-ionizing"; after "practice of", deleted "the healing arts" and added "medical imaging"; after "administering", deleted "radiologic" and added "medical imaging and radiation therapy" and after "examination and", changed "certification" to "licensure".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 26 to 29, 31, 51 to 61, 63, 74 to 120, 125 to 130, 132.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 12, 13, 19 to 24, 28, 33, 35 to 57.

61-14E-3. Administration; enforcement.

The administration and enforcement of the Medical Imaging and Radiation Therapy Health and Safety Act is vested in the department.

History: Laws 1983, ch. 317, § 3; 1993, ch. 140, § 2; 2009, ch. 106, § 3.

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation

Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act".

The 1993 amendment, effective June 18, 1993, substituted "department" for "division".

61-14E-4. Definitions.

As used in the Medical Imaging and Radiation Therapy Health and Safety Act:

- A. "advisory council" means the medical imaging and radiation therapy advisory council;

- B. "board" means the environmental improvement board;
- C. "certificate of limited practice" means a certificate issued pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act to persons who perform restricted diagnostic radiography under direct supervision of a licensed practitioner limited to the following specific procedures:
- (1) the viscera of the thorax;
 - (2) extremities;
 - (3) radiation to humans for diagnostic purposes in the practice of dentistry;
 - (4) axial/appendicular skeleton; or
 - (5) the foot, ankle or lower leg;
- D. "certified nurse practitioner" means a person licensed pursuant to Section 61-3-23.2 NMSA 1978;
- E. "credential" or "certification" means the recognition awarded to an individual who meets the requirements of a credentialing or certification organization;
- F. "credentialing organization" or "certification organization" means a nationally recognized organization recognized by the board that issues credentials or certification through testing or evaluations that determine whether an individual meets defined standards for training and competence in a medical imaging modality;
- G. "department" means the department of environment;
- H. "diagnostic medical sonographer" means a person, including a vascular technologist or echocardiographer, other than a licensed practitioner, who provides patient care services using ultrasound;
- I. "division" means the environmental health bureau of the field operations and infrastructure division of the department;
- J. "ionizing radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons and other particles capable of producing ions; "ionizing radiation" does not include non-ionizing radiation, such as sound waves, radio waves or microwaves, or visible, infrared or ultraviolet light;
- K. "license" means a document issued by the department pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act to an individual who has met the requirements of licensure;
- L. "licensed practitioner" means a person licensed to practice medicine, dentistry, podiatry, chiropractic or osteopathy in this state;
- M. "licensure" means a grant of authority through a license or limited license to perform specific medical imaging and radiation therapy services pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;
- N. "magnetic resonance technologist" means a person other than a licensed practitioner who performs magnetic resonance procedures under the supervision of a licensed practitioner using magnetic fields and radio frequency signals;
- O. "medical imaging" means the use of substances or equipment emitting ionizing or non-ionizing radiation on humans for diagnostic or interventional purposes;
- P. "medical imaging modality" means:
- (1) diagnostic medical sonography and all of its subspecialties;
 - (2) magnetic resonance imaging and all of its subspecialties;
 - (3) nuclear medicine technology and all of its subspecialties;
 - (4) radiation therapy and all of its subspecialties; and
 - (5) radiography and all of its subspecialties;
- Q. "medical imaging professional" means a person who is a magnetic resonance technologist, radiographer, nuclear medicine technologist or diagnostic medical sonographer and who is licensed pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;
- R. "non-ionizing radiation" means the static and time-varying electric and magnetic fields and radio frequency, including microwave radiation and ultrasound;
- S. "nuclear medicine technologist" means a person other than a licensed practitioner who applies radiopharmaceutical agents to humans for diagnostic or therapeutic purposes under the direction of a licensed practitioner;

T. "physician assistant" means a person licensed pursuant to Section 61-6-7 or 61-10A-4 NMSA 1978 [repealed];

U. "radiation therapy" means the application of ionizing radiation to humans for therapeutic purposes;

V. "radiation therapy technologist" means a person other than a licensed practitioner whose application of radiation to humans is for therapeutic purposes;

W. "radiographer" means a person other than a licensed practitioner whose application of radiation to humans is for diagnostic purposes;

X. "radiography" means the application of radiation to humans for diagnostic purposes, including adjustment or manipulation of x-ray systems and accessories, including image receptors, positioning of patients, processing of films and any other action that materially affects the radiation dose to patients;

Y. "radiologist" means a licensed practitioner certified by the American board of radiology, the British royal college of radiology, the American osteopathic board of radiology or the American chiropractic board of radiology; and

Z. "radiologist assistant" means an individual licensed as a radiographer as defined in the Medical Imaging and Radiation Therapy Health and Safety Act who holds additional certification as a registered radiologist assistant by the American registry of radiologic technologists and who works under the supervision of a radiologist; provided that a radiologist assistant shall not interpret images, render diagnoses or prescribe medications or therapies."

History: Laws 1983, ch. 317, § 4; 1991, ch. 14, § 1; 1993, ch. 140, § 1; 1994, ch. 82, § 1; 2009, ch. 106, § 4; 2013, ch. 116, § 1.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2016, ch. 90, § 29 repealed 61-10A-4 NMSA 1978, effective July 1, 2016.

The 2013 amendment, effective June 14, 2013, changed the definition of "division" and "non-ionizing radiation"; in Subsection I, after "health", added "bureau of the field operations and infrastructure" and after "department", deleted "of environment"; and in Subsection R, after "means the", deleted "optical radiations, including ultraviolet, visible, infrared and lasers".

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; in Subsection A, changed "radiation technical" to "medical imaging and

radiation therapy"; deleted former Subsection J, which defined "radiologist technologist"; deleted former Subsection K, which defined "radiologic technology"; deleted former Subsection S, which defined "registered physician and assistant"; and added Subsections E, F, H through K, M through R, T, U, X and Z.

The 1994 amendment, effective May 18, 1994, added Subsection D and redesignated former Subsections D through K as Subsections E through L, respectively, and added Subsection M.

The 1993 amendment, effective June 18, 1993, added Paragraph (5) of Subsection C, making related grammatical changes; and rewrote Subsection D, which formerly defined "division".

The 1991 amendment, effective June 14, 1991, added Paragraph (4) in Subsection C; in Subsection K, substituted "licensed practitioner" for "physician" and added "or the American chiropractic board of radiology" at the end; and made related stylistic changes.

61-14E-5. Board; powers; duties.

The board shall, pursuant to the advice and recommendations of the advisory council and following the procedures set forth in Section 74-1-9 NMSA 1978:

A. adopt and promulgate such rules, regulations and licensure standards as may be necessary to effectuate the provisions of the Medical Imaging and Radiation Therapy Health and Safety Act and to maintain high standards of practice as verified by credentialing organizations for medical imaging and radiation therapy; and

B. adopt rules and regulations establishing continuing education requirements as a condition of licensure renewal for the purpose of protecting the health and well-being of the citizens of New Mexico and promoting current knowledge and practice as verified by credentialing organizations for medical imaging and radiation therapy.

History: Laws 1983, ch. 317, § 5; 2009, ch. 106, § 5.

The 2009 amendment, effective June 19, 2009, in Subsection A, changed "certification" to "licensure"; changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; and added "as verified by credentialing organizations for medical imaging and radiation therapy"; and in

Subsection B, changed "certification" to "licensure"; and at the end of the sentence, deleted "regarding radiologic technology" and added the remainder of the sentence.

ANNOTATIONS

Promulgation of rules and regulations by board. — The environmental improvement board is authorized to

promulgate rules and regulations for radiation protection without the radiation technical advisory council approving the terms of such rules and regulations, if the board promulgates regulations pursuant to the Medical Radiation Health and Safety Act (now Medical Imaging and Radiation Therapy Health and Safety Act), Sections 61-14E-1

to 61-14E-12 NMSA 1978; but the board may not do so without the council's approval if the regulations are promulgated pursuant to the Radiation Protection Act (Section 74-3-1 NMSA 1978 et seq.). 1988 Op. Att'y Gen. No. 88-39.

61-14E-5.1. Medical imaging and radiation therapy advisory council; creation and organization.

A. The "medical imaging and radiation therapy advisory council" is established, consisting of eleven members. The members shall be appointed by the governor, after consultation with the secretary of environment and professional organizations representing medical imaging and radiation therapy, for three-year staggered terms. The governor shall fill any vacancy occurring on the council within sixty days of the vacancy. The replacement appointee shall serve the remainder of the original member's unexpired term.

B. The members of the council shall be:

(1) six medical imaging professionals licensed by the department, representing each medical imaging modality defined under the Medical Imaging and Radiation Therapy Health and Safety Act, including one licensed radiographer and one licensed radiologist assistant;

(2) one individual who holds a certificate of limited practice in radiography;

(3) three physicians licensed pursuant to Section 61-6-1 or 61-10-1 [repealed] NMSA 1978, each of whom represents a different medical specialty, only one of whom shall be a radiologist and at least one of whom shall be from a rural area; and

(4) one member of the general public who is not licensed by the department nor a relative of anyone licensed by the department.

C. The council may create ad hoc disciplinary review committees to consider medical matters and make recommendations to the council. Ad hoc disciplinary review committees shall, at a minimum, include:

(1) one individual licensed by the department in the specific modality in question and who holds similar credentials as the individual under disciplinary review;

(2) one physician, licensed pursuant to Section 61-6-1 or 61-10-1 [repealed] NMSA 1978, who is experienced in the modality in question; and

(3) one member of the general public.

D. A member shall serve no more than two consecutive three-year terms.

E. A member of the council may receive per diem and mileage as provided for non-salaried public officers in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance in connection with the discharge of the duties as a council member.

F. A member failing to attend three consecutive regular and properly noticed meetings of the council without a reasonable excuse shall be automatically removed from the council.

G. In the event of a vacancy, the department shall immediately notify the governor of the vacancy. Within ninety days of receiving notice of a vacancy, the governor shall appoint a qualified person to fill the remainder of the unexpired term.

H. A majority of the council members currently serving constitutes a quorum of the council.

I. The council shall meet at least once a year and at such other times as it deems necessary.

J. The council shall annually elect officers as deemed necessary to administer its duties.

K. Notwithstanding the provisions of Subsections A through I of this section, members shall initially be appointed by the governor so that five members shall be appointed for terms of three years and six members shall be appointed for terms of five years. Thereafter, the additional members shall be appointed by the governor for staggered terms of three years each.

L. As used in this section:

(1) "relative" means a person's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or spouse's parent; and

(2) "rural" means an area or location within a county having fifty thousand or fewer inhabitants as of the last federal decennial census.

History: Laws 2009, ch. 106, § 12.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2016, ch. 90, § 29 repealed 61-10-1 NMSA 1978, effective July 1, 2016.

Effective dates. — Laws 2009, ch. 106 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

61-14E-6. Division; powers; duties.

The division, pursuant to the rules and regulations promulgated by the board, shall:

- A. maintain and enforce licensure standards for magnetic resonance, radiography, radiation therapy technology, nuclear medicine technology, diagnostic medical sonography and radiology and licensure standards for restricted diagnostic radiography;
- B. refer to national educational accreditation standards for educational programs and, pursuant to those standards, establish criteria for education programs of magnetic resonance, radiography, radiation therapy technology, nuclear medicine technology and diagnostic medical sonography;
- C. provide for surveys of educational programs preparing persons for certification under the Medical Imaging and Radiation Therapy Health and Safety Act;
- D. grant, deny or withdraw approval from educational programs for failure to meet prescribed standards, provided that a majority of the board concurs in any decision;
- E. establish procedures for examination, certification and renewal of certificates of applicants; and
- F. establish scope of practice and ethics rules.

History: Laws 1983, ch. 317, § 6; 2009, ch. 106, § 6.

The 2009 amendment, effective June 19, 2009, in Subsection A, changed "certification" to "licensure"; added "magnetic resonance" and deleted "technology and certificates of limited practice", and added the remainder of the sentence; deleted former Subsection B, which provided for

educational programs and added a new Subsection B; in Subsection C, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; and added Subsection F.

61-14E-7. Licensure; exceptions.

A. It is unlawful, unless licensed by the department as a medical imaging professional or radiation therapist, for any person to:

- (1) use ionizing or non-ionizing radiation on humans;
- (2) use any title, abbreviation, letters, figures, signs or other devices to indicate that the person is a licensed medical imaging professional or radiation therapist; or
- (3) engage in any of the medical imaging modalities as defined by the Medical Imaging and Radiation Therapy Health and Safety Act.

B. Notwithstanding any other provision of the Medical Imaging and Radiation Therapy Health and Safety Act, the requirement of a medical imaging license shall not apply to:

- (1) a licensed practitioner;
- (2) a health care practitioner licensed or certified by an independent board operating pursuant to Chapter 61 NMSA 1978 or a state regulatory body; provided that any medical imaging certification and examination program for health care practitioners established by an independent board or state regulatory body shall be submitted to the advisory council and approved by the board; or
- (3) a registered nurse or certified nurse-midwife performing ultrasound procedures; provided that the registered nurse or certified nurse-midwife has documented demonstration of competency within the registered nurse's scope of practice in compliance with board of nursing rules or certified nurse-midwife's scope of practice in compliance with department of health rules. A registered nurse or a certified nurse-midwife may perform ultrasound procedures limited to a focused imaging target. A registered nurse or certified nurse-midwife shall not perform diagnostic ultrasound.

C. The requirement of a medical imaging license shall also not apply to a student who is enrolled in and attending a required individual education program of a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry or dental hygiene to apply radiation to humans under the supervision of a licensed practitioner or under the direct supervision of a licensed medical imaging professional or radiation therapist.

D. Notwithstanding any other provision of the Medical Imaging and Radiation Therapy Health and Safety Act, the requirement of a license shall not apply to a student completing clinical requirements of an approved education program working under the supervision of a licensed practitioner or under the direct supervision of a medical imaging professional or radiation therapist licensed in the practice for which the student is seeking licensure.

E. The department shall adopt rules and regulations for the education and licensure of advanced medical imaging professionals.

F. The department may require students in medical imaging and radiation therapy educational programs to register with the department while enrolled in an approved education program.

G. A registered nurse or a certified nurse-midwife shall not perform ionizing procedures, including radiography, radiation therapy, nuclear medicine or a non-ionizing magnetic resonance procedure, unless licensed by the department as a medical imaging professional. Nothing in the Medical Imaging and Radiation Therapy Health and Safety Act shall affect the authority of a health care professional licensed pursuant to Chapter 24 or Chapter 61 NMSA 1978 to order or use images resulting from ionizing or non-ionizing procedures in accordance with the licensed health care professional's scope of practice.

History: Laws 1983, ch. 317, § 7; 1991, ch. 14, § 2; 1993, ch. 140, § 3; 2009, ch. 106, § 7; 2013, ch. 116, § 2.

Cross references. — For the Parental Responsibility Act, see 40-5A-1 NMSA 1978 et seq.

The 2013 amendment, effective June 14, 2013, provided limited authorization for registered or certified health care practitioners, registered nurses and certified nurse-midwives to perform certain ultrasound procedures; in Paragraph (1) of Subsection B, after "practitioner" deleted language which exempted licensed or certified auxiliary or health practitioners; added Paragraphs (2) and (3) of Subsection B; and added Subsection G.

The 2009 amendment, effective June 19, 2009, in Subsection A, changed "certified by the department as a radiologic technologist" to "licensed by the department as a medical imaging professional or radiation therapist"; in Paragraph (1) of Subsection A, after "ionizing", added "or non-ionizing"; in Paragraph (2) of Subsection A, changed "certified radiologic technologist" to "licensed medical imaging professional or radiation therapist"; in former Subsection B, deleted language which provided for the use of

the title "radiologic technologist" of "L.R.T."; in Subsection B, at the beginning of the sentence, added the phrase beginning with "Notwithstanding" through the comma; after "requirement of a" in two places, changed "certificate" to "medical imaging license"; after "auxiliaries" added "or health practitioners"; after "hygiene", deleted "or radiologic technology"; after "direct supervision of a", deleted "certified radiologic technologist" and added "licensed medical imaging professional or radiation therapist"; and added Subsections C, D and E.

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" in the introductory language.

The 1991 amendment, effective June 14, 1991, in the final paragraph, deleted "or a student enrolled in and attending a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene or radiologic technology who applies radiation to humans while under the supervision of a licensed practitioner or the direct supervision of a certified radiologic technologist" and added the second sentence.

61-14E-7.1. Emergency provision.

A person having a valid certificate of limited practice may authorize diagnostic radiography procedures outside the normal scope of a limited radiographic practitioner if the person issued the certificate of limited practice is employed in an area having a federal designation as a medically underserved area and the person issued the certificate of limited practice is confronted with an emergency situation, where, by order of a licensed practitioner, a certified nurse practitioner or a registered physician assistant, the additional diagnostic radiography procedure is medically necessary for the immediate safety or health of the patient.

History: Laws 1994, ch. 82, § 2.

61-14E-8. Temporary certification.

The department may issue a temporary certificate to practice as a radiologic technologist to a person who satisfactorily completes an approved program in radiologic technology, provided that the temporary certificate:

- A. is applied for within one year of graduation;
- B. is valid only for a period not to exceed one year;
- C. is only issued to a person once; and

D. is contingent upon successful completion of an examination required by the board and expires upon failure to pass the examination.

History: 1978 Comp., § 61-14E-8, enacted by Laws 1991, ch. 14, § 3; 1993, ch. 140, § 4.

Repeals and reenactments. — Laws 1991, ch. 14, § 3 repealed former 61-14E-8 NMSA 1978, as enacted by Laws 1983, ch. 317, § 8, relating to temporary certification, and enacted the above section, effective June 14, 1991.

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" near the beginning of the section.

61-14E-9. Fees for licensure.

After the promulgation of rules and regulations, except as provided in Section 61-1-34 NMSA 1978, the department shall charge and collect the following fees:

- A. an application fee not to exceed ten dollars (\$10.00);
- B. an examination fee not to exceed one hundred fifty dollars (\$150) to cover the costs the department incurs in administering the initial examination required for limited certification;
- C. a biennial licensure fee not to exceed one hundred dollars (\$100);
- D. a temporary licensure fee not to exceed fifty dollars (\$50.00) to cover a period no longer than twelve months when new graduates of an approved program are in the process of taking required licensure examinations; and
- E. miscellaneous fees, such as for requests for duplicate or replacement licenses, legal name change and written verification, not to exceed twenty-five dollars (\$25.00).

History: Laws 1983, ch. 317, § 9; 1993, ch. 140, § 5; 2009, ch. 106, § 8; 2020, ch. 6, 43.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in the introductory clause, after "regulations", added "except as provided in Section 61-1-34 NMSA 1978".

The 2009 amendment, effective June 19, 2009, in Subsection A, deleted "initial" before "application"; in Subsection B, deleted the former provision which provided for a fee not to exceed \$50 for a full certification and \$25 for

a certificate of limited practice, and added the remainder of the sentence after "exceed"; deleted former Subsection C which provided for a full certificate renewal fee not to exceed \$100; deleted former Subsection D which provided for a certificate of limited practice renewal fee of not to exceed \$60; and deleted language which provided for the renewal of certificates due to lapse for failure to renew; and added Subsections C through E.

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" in the introductory language of the first paragraph, in Subsection D, and in two places in the first sentence of the second paragraph.

61-14E-10. Fund established; disposition; method of payment.

- A. There is created in the state treasury the "radiologic technology fund".
- B. All fees received by the department pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the radiologic technology fund.
- C. Payments out of the radiologic technology fund shall be on vouchers issued and signed by the person designated by the department upon warrants drawn by the department of finance and administration and shall be used by the department for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Medical Imaging and Radiation Therapy Health and Safety Act, the duties imposed by that act and the promotion of education and standards for medical imaging technology and radiation therapy in this state. All money unexpended or unencumbered at the end of the fiscal year shall remain in the radiologic technology fund for use in accordance with the provisions of the Medical Imaging and Radiation Therapy Health and Safety Act.

History: Laws 1983, ch. 317, § 10; 1989, ch. 324, § 32; 1993, ch. 140, § 6; 2009, ch. 106, § 9.

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act", and in Subsection C,

changed "radiologic technology" to "medical imaging technology and radiation therapy".

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" in the first sentence of Subsection B and in two places in the first sentence of Subsection C.

The 1989 amendment, effective April 7, 1989, deleted the former last sentence of Subsection C, which read "Any income earned on investment of the fund shall be credited to the fund for use as provided in that act".

61-14E-11. Suspension; revocation; application of Uniform Licensing Act.

The board, pursuant to the advice and recommendation of the advisory council, may deny, revoke or suspend any license held or applied for under the Medical Imaging and Radiation Therapy Health and Safety Act, pursuant to the procedures established in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], upon grounds that the medical imaging professional, radiation therapist or the applicant:

- A. is guilty of fraud or deceit in procuring or attempting to procure a license or certificate of limited practice;
- B. is convicted of a felony subsequent to certification;
- C. is unfit or incompetent;
- D. is habitually intemperate or is addicted to the use of habit-forming drugs;
- E. is mentally incompetent;
- F. has aided and abetted a person who does not possess a license pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act or otherwise authorized by that act in engaging in the activities of a license holder;
- G. has engaged in any practice beyond the scope of authorized activities of an individual licensed or a certificate of limited practice holder pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;
- H. is guilty of unprofessional conduct or unethical conduct as defined by rules promulgated by the board;
- I. has interpreted a diagnostic imaging procedure for a patient, the patient's family or the public; or
- J. has willfully or repeatedly violated any provisions of the Medical Imaging and Radiation Therapy Health and Safety Act.

History: Laws 1983, ch. 317, § 11; 2009, ch. 106, § 10.

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; after "suspend any", changed "certificate" to "license"; and after "grounds that the", deleted "radiologic technologist" and added "medical

imaging professional or radiation therapist"; in Subsection A, after "procure a", changed "full certificate" to "license"; in Subsection F, after "person", deleted "is not certified" and added "does not possess a license" and after "activities of a", changed "certificate" to "license"; and in Subsection G, after "activities of a", changed "a full certificate or" to "an individual licensed or a".

61-14E-12. Violations; penalties.

It is a misdemeanor for any person, firm, association or corporation to:

- A. knowingly or willfully employ as a medical imaging professional or radiation therapist any person who is required to but does not possess a valid license or certificate of limited practice to engage in the practice of medical imaging or radiation therapy;
- B. sell, fraudulently obtain or furnish any medical imaging technology or radiation therapy license or certificate of limited practice or to aid or abet therein;
- C. practice medical imaging or radiation therapy as defined by the Medical Imaging and Radiation Therapy Health and Safety Act unless exempted or licensed to do so under the provisions of that act; or
- D. otherwise violate any provisions of the Medical Imaging and Radiation Therapy Health and Safety Act.

The department shall assist the proper legal authorities in the prosecution of all persons violating the provisions of the Medical Imaging and Radiation Therapy Health and Safety Act. In prosecutions under that act, it shall not be necessary to prove a general course of conduct. Proof of a single act, a single holding out or a single attempt shall constitute a violation, and, upon conviction, such person shall be sentenced to be imprisoned in the county jail for a definite term not to

exceed one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or both. The department shall notify within thirty days of a final disciplinary action any credentialing organization through which the person is credentialed or certified.

History: Laws 1983, ch. 317, § 12; 1993, ch. 140, § 7; 2009, ch. 106, § 11.

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; in Subsection A, after "employ as a", deleted "radiologic technologist" and added "medical imaging professional or radiation therapist"; after "valid", changed "certificate" to "license" and after "practice of", deleted "radiologic technology" and added "medical imaging or radiation therapist"; in Subsection

B, after "furnish any", deleted "radiologic technology" and added "medical imaging or radiation therapist" and after "certificate or", changed "certificate" to "license"; and in Subsection C, after "practice", deleted "radiologic technology" and added "medical imaging or radiation therapist"; after "exempted or", changed "duly certified" to "license"; and added the last sentence.

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" in the first sentence of the second paragraph.

ARTICLE 14F

Uniform Athlete Agents

Sec.

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61-14F-1. Short title.

This act [61-14F-1 to 61-14F-19 NMSA 1978] may be cited as the "Uniform Athlete Agents Act".

History: Laws 2009, ch. 169, § 1.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-2. Definitions.

As used in the Uniform Athlete Agents Act:

A. "agency contract" means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional-sports-services contract or an endorsement contract;

B. "athlete agent" means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. "Athlete agent" includes an individual who represents to the public that the individual is an athlete agent. "Athlete agent" does not include the spouse, parent, sibling, grandparent or guardian of a student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;

C. "athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

D. "contact" means a communication, direct or indirect, between an athlete agent and a student athlete, to recruit or solicit the student athlete to enter into an agency contract;

E. "endorsement contract" means an agreement under which a student athlete is employed or receives consideration to use on behalf of the other party any value that the student athlete may have because of publicity, reputation, following or fame obtained because of athletic ability or performance;

F. "intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics;

G. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, governmental agency, governmental instrumentality, public corporation or any other legal or commercial entity;

H. "professional-sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization or as a professional athlete;

I. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

J. "registration" means registration as an athlete agent pursuant to the Uniform Athlete Agents Act;

K. "secretary" means the secretary of state;

L. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

M. "student athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete for purposes of that sport.

History: Laws 2009, ch. 169, § 2.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-3. Service of process; subpoenas.

A. By acting as an athlete agent in this state, a nonresident individual appoints the secretary as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

B. The secretary may issue subpoenas for any material that is relevant to the administration of the Uniform Athlete Agents Act.

History: Laws 2009, ch. 169, § 3.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-4. Athlete agents; registration required; void contracts.

A. Except as otherwise provided in Subsection B of this section, an individual shall not act as an athlete agent in this state without holding a certificate of registration pursuant to Section 6 [61-14F-6 NMSA 1978] or 8 [61-14F-8 NMSA 1978] of the Uniform Athlete Agents Act.

B. Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(1) a student athlete or another person acting on behalf of the student athlete initiates communication with the individual; and

(2) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

C. An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

History: Laws 2009, ch. 169, § 4.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-5. Registration as athlete agent; form; requirements.

A. An applicant for registration shall submit an application for registration to the secretary in a form prescribed by the secretary. An application filed under this section is a public record. The application shall be in the name of an individual and, except as otherwise provided in Subsection B of this section, shall be signed or otherwise authenticated by the applicant under penalty of perjury and shall state or contain:

- (1) the name of the applicant and the address of the applicant's principal place of business;
- (2) the name of the applicant's business or employer, if applicable;
- (3) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
- (4) a description of the applicant's:
 - (a) formal training as an athlete agent;
 - (b) practical experience as an athlete agent; and
 - (c) educational background relating to the applicant's activities as an athlete agent;
- (5) the names and addresses of three individuals, not related to the applicant, who are willing to serve as references;
- (6) the name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
- (7) the names and addresses of all persons who are:
 - (a) with respect to the athlete agent's business if it is not a corporation, partners, members, officers, managers, associates or profit-sharers of the business; and
 - (b) with respect to a corporation employing the athlete agent, officers, directors and any shareholders of the corporation having an interest of five percent or greater;
- (8) whether the applicant or any person named pursuant to Paragraph (7) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
- (9) whether there has been an administrative or judicial determination that the applicant or any person named pursuant to Paragraph (7) of this subsection has made a false, misleading, deceptive or fraudulent representation;
- (10) any instance in which the conduct of the applicant or any person named pursuant to Paragraph (7) of this subsection resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution;
- (11) any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to Paragraph (7) of this subsection arising out of occupational or professional conduct; and
- (12) whether there has been a denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to Paragraph (7) of this subsection as an athlete agent in any state.

B. An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate

in lieu of submitting an application in the form prescribed pursuant to Subsection A of this section. The secretary shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

- (1) was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
- (2) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
- (3) was signed by the applicant under penalty of perjury.

History: Laws 2009, ch. 169, § 5.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-6. Certificate of registration; issuance or denial; renewal.

A. Except as otherwise provided in Subsection B of this section, the secretary shall issue a certificate of registration to an individual who complies with Subsection A of Section 5 [61-14F-5 NMSA 1978] of the Uniform Athlete Agents Act or whose application has been accepted pursuant to Subsection B of that section.

B. The secretary may refuse to issue a certificate of registration if the secretary determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary may consider whether the applicant has:

- (1) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
- (2) made a materially false, misleading, deceptive or fraudulent representation in the application or as an athlete agent;
- (3) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
- (4) engaged in conduct prohibited by Section 14 [61-14F-14 NMSA 1978] of the Uniform Athlete Agents Act;
- (5) had a registration or licensure as an athlete agent suspended, revoked or denied or was refused renewal of registration or licensure as an athlete agent in any state;
- (6) engaged in conduct the consequence of which was that a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student athlete or educational institution; or
- (7) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty or integrity.

C. In making a determination under Subsection B of this section, the secretary shall consider:

- (1) how recently the conduct occurred;
- (2) the nature of the conduct and the context in which it occurred; and
- (3) any other relevant conduct of the applicant.

D. An athlete agent may apply to renew a certificate of registration by submitting an application for renewal in a form prescribed by the secretary. An application filed under this section is a public record. The application for renewal shall be signed by the applicant under penalty of perjury and shall contain current information on all matters required in an original registration.

E. An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to Subsection D of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The secretary shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

- (1) was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(2) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(3) was signed by the applicant under penalty of perjury.

F. A certificate of registration or a renewal of a certificate of registration is valid for two years.

History: Laws 2009, ch. 169, § 6.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-7. Suspension, revocation or refusal to renew registration.

A. The secretary may suspend, revoke or refuse to renew a certificate of registration for conduct that would have justified denial of registration pursuant to Subsection B of Section 6 [61-14F-6 NMSA 1978] of the Uniform Athlete Agents Act.

B. The secretary may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

History: Laws 2009, ch. 169, § 7.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-8. Temporary registration.

The secretary may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

History: Laws 2009, ch. 169, § 8.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-9. Registration and renewal fees.

Except as provided in Section 61-1-34 NMSA 1978, an application for registration or renewal of registration shall be accompanied by a fee in the following amount:

A. two hundred fifty dollars (\$250) for an initial application for registration;

B. two hundred dollars (\$200) for an application for registration based upon a certificate of registration or licensure issued by another state;

C. two hundred fifty dollars (\$250) for an application for renewal of registration; or

D. two hundred dollars (\$200) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

History: Laws 2009, ch. 169, § 9; 2021, ch. 92, § 11.

The 2021 amendment, effective June 18, 2021, provided for the waiver of registration or renewal of registration fees for military service members and veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-10. Required form of contract.

A. An agency contract shall be in a record, signed or otherwise authenticated by the parties.

B. An agency contract shall state or contain:

- (1) the amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;
- (2) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student athlete signed the agency contract;
- (3) a description of any expenses that the student athlete agrees to reimburse;
- (4) a description of the services to be provided to the student athlete;
- (5) the duration of the contract; and
- (6) the date of execution.

C. An agency contract shall contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface type in capital letters stating:

**"WARNING TO STUDENT ATHLETE
IF YOU SIGN THIS CONTRACT:**

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN SEVENTY-TWO HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN FOURTEEN DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY."

D. An agency contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

E. The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

History: Laws 2009, ch. 169, § 10.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-11. Notice to educational institution.

A. Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

B. Within seventy-two hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled that the student athlete has entered into an agency contract.

History: Laws 2009, ch. 169, § 11.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-12. Student athlete's right to cancel.

A. A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.

B. A student athlete shall not waive the right to cancel an agency contract.

C. If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

History: Laws 2009, ch. 169, § 12.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-13. Required records.

A. An athlete agent shall retain the following records for a period of five years:

- (1) the name and address of each individual represented by the athlete agent;
- (2) any agency contract entered into by the athlete agent; and
- (3) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

B. Records required pursuant to Subsection A of this section to be retained are open to inspection by the secretary during normal business hours.

History: Laws 2009, ch. 169, § 13.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-14. Prohibited conduct.

A. An athlete agent, with the intent to induce a student athlete to enter into an agency contract, shall not:

- (1) give any materially false or misleading information or make a materially false promise or representation;
- (2) furnish anything of value to a student athlete before the student athlete enters into the agency contract; or
- (3) furnish anything of value to any individual other than the student athlete or another registered athlete agent.

B. An athlete agent shall not intentionally:

- (1) initiate contact with a student athlete unless registered pursuant to the Uniform Athlete Agents Act;
- (2) refuse or fail to retain or permit inspection of the records required to be retained pursuant to Section 13 [61-14F-13 NMSA 1978] of the Uniform Athlete Agents Act;
- (3) fail to register when required pursuant to Section 4 [61-14F-4 NMSA 1978] of the Uniform Athlete Agents Act;
- (4) provide materially false or misleading information in an application for registration or renewal of registration;
- (5) predate or postdate an agency contract; or
- (6) fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

History: Laws 2009, ch. 169, § 14.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or

applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-15. Criminal penalties.

An athlete agent who violates the provisions of Section 14 [61-14F-14 NMSA 1978] of the Uniform Athlete Agents Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2009, ch. 169, § 15.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-16. Civil remedies.

A. An educational institution has a right of action against an athlete agent for damages caused by a violation of the provisions of the Uniform Athlete Agents Act. In an action pursuant to this section, the court may award to the prevailing party costs and reasonable attorney fees.

B. Damages of an educational institution pursuant to Subsection A of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent, the educational institution was injured by a violation of the Uniform Athlete Agents Act or was penalized, disqualified or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

C. A right of action pursuant to this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent.

D. The Uniform Athlete Agents Act does not restrict rights, remedies or defenses of any person under law or equity.

History: Laws 2009, ch. 169, § 16.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-17. Administrative penalty.

The secretary may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of the Uniform Athlete Agents Act.

History: Laws 2009, ch. 169, § 17.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its

application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-18. Uniformity of application and construction.

In applying and construing the Uniform Athlete Agents Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2009, ch. 169, § 18.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or

applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

61-14F-19. Federal Electronic Signatures in Global and National Commerce Act.

The provisions of the Uniform Athlete Agents Act governing the legal effect, validity or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the federal Electronic Signatures in Global and National Commerce Act and supersede, modify and limit the federal Electronic Signatures in Global and National Commerce Act.

History: Laws 2009, ch. 169, § 19.

Cross references. — For the federal Electronic Signatures in Global and National Commerce Act, see 15 U.S.C. § 7001.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

ARTICLE 15

Architects

Sec.
61-15-1. Purposes of the act. (Repealed effective July 1, 2024.)

61-15-1.1. Short title. (Repealed effective July 1, 2024.)

61-15-2. Definitions. (Repealed effective July 1, 2024.)

61-15-3. Board of examiners for architects created; terms; qualifications. (Repealed effective July 1, 2024.)

61-15-4. Powers and duties of the board. (Repealed effective July 1, 2024.)

61-15-4.1. Repealed.

61-15-5. Additional duties of the board. (Repealed effective July 1, 2024.)

61-15-6. Requirements for registration. (Repealed effective July 1, 2024.)

Sec.
61-15-7. Certificates of registration. (Repealed effective July 1, 2024.)

61-15-8. Exemptions; from registration. (Repealed effective July 1, 2024.)

61-15-9. Project exemptions. (Repealed effective July 1, 2024.)

61-15-10. Violations; penalties. (Repealed effective July 1, 2024.)

61-15-11. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)

61-15-12. Disciplinary actions. (Repealed effective July 1, 2024.)

61-15-13. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

61-15-1. Purposes of the act. (Repealed effective July 1, 2024.)

In order to safeguard life, health and property and to promote public welfare, any person practicing architecture in this state shall be required to submit evidence that he is qualified to practice and shall be registered as provided in the Architectural Act [61-15-1.1 NMSA 1978]. It shall be unlawful for any person to practice architecture in this state unless that person is duly registered or exempt under the provisions of the Architectural Act.

History: Laws 1931, ch. 155, § 1; 1939, ch. 82, § 1; 1941 Comp., § 51-1401; 1953 Comp., § 67-12-1; 1987, ch. 282, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

Cross references. — For engineering practice, see 61-23-1 NMSA 1978 et seq.

The 1987 amendment, effective June 19, 1987, deleted the Subsection A designation at the beginning, substituted "in the Architectural Act" for "and from six months after the passage of this act" at the end of the first sentence, and in the second sentence inserted "or exempt" following "is duly

registered" and substituted "the Architectural Act" for "this act except as hereinafter provided" at the end.

ANNOTATIONS

Registration not required for licensed engineers. — Professional engineers licensed under 67-21-1 to 67-21-25, 1953 Comp. (now repealed). (now Section 61-23-1 NMSA 1978 et seq.), need not secure registration under this act. They are authorized to draw plans and construct buildings and to do many acts similar to those of registered architects. The two laws are similar, but need not be read together, since they are each for the purpose of

regulating separate and distinct professions in which the actual practice calls for doing similar acts. 1939-40 Op. Att'y Gen. No. 39-3205 (rendered prior to enactment of Engineering and Land Surveying Practice Act).

Registration and residence prerequisites to county employment. — A county may not employ an architect who is not a resident of New Mexico and who has not obtained state registration. 1947-48 Op. Att'y Gen. No. 47-5072.

Law reviews. — For note, "Police Power and the Design of Buildings," see 5 Nat. Res. J. 122 (1965).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Res. J. 599 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 5 Am. Jur. 2d Architects § 1 et seq.

Failure of architect to procure license as affecting validity or enforceability of contracts, 30 A.L.R. 851, 42 A.L.R. 1226, 118 A.L.R. 646.

Architect's or engineer's compensation as affected by inability to carry out plan or specifications at amount satisfactory to employer, 127 A.L.R. 410.

Responsibility of one acting as architect for defects or insufficiency of work attributable to plans, 25 A.L.R.2d 1085.

What amounts to architectural or engineering services within license requirements, 82 A.L.R.2d 1013.

Architect's liability for personal injury or death allegedly caused by improper or defective plans or design, 97 A.L.R.3d 455.

6 C.J.S. Architects § 4.

61-15-1.1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 15 NMSA 1978 may be cited as the "Architectural Act".

History: 1978 Comp., § 61-15-1.1, enacted by Laws 1979, ch. 362, § 1; 1987, ch. 282, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

The 1987 amendment, effective June 19, 1987, substituted "Chapter 61, Article 15 NMSA 1978" for "Sections 61-15-1 through 61-15-12 NMSA 1978".

61-15-2. Definitions (Repealed effective July 1, 2024.)

As used in the Architectural Act [61-15-1.1 NMSA 1978]:

A. "architect" means any individual registered under the Architectural Act to practice architecture;

B. "architectural services" means the services, as defined by rule of the board, performed in the practice of architecture. These services include predesign services, programming and planning, providing designs, drawings, specifications, other technical submissions, administration of construction contracts, coordination of technical submissions prepared by others and such other professional services as may be necessary to the planning, progress and completion of any architectural services. An architect who has complied with all of the laws of New Mexico relating to the practice of architecture has a right to engage in the incidental practice of activities properly classifiable as engineering; provided that the architect does not hold himself out to be an engineer or as performing engineering services and further provided that the architect performs only that part of the work for which the architect is professionally qualified and uses qualified professional engineers, architects or others for those portions of the work in which the contracting architect is not qualified. Furthermore, the architect shall assume all responsibility for compliance with all laws, codes, rules and ordinances of the state or its political subdivisions pertaining to documents bearing an architect's professional seal;

C. "board" means the board of examiners for architects;

D. "construction administration", when performed by an architect, means the interpretation of the drawings and specifications, the establishment of standards of acceptable workmanship and the observation of construction to determine its consistency with the general intent of the construction documents. Inspection of buildings by contractors, subcontractors or building inspectors or their agents shall not constitute construction administration;

E. "incidental practice" means the performance of other professional services that are related to an architect's performance of architectural services;

F. "intern architect" means a person who is actively pursuing completion of the requirements for diversified training in accordance with rules of the board;

G. "practice of architecture" means rendering or offering to render architectural services in connection with the design, construction, enlargement or alteration of a building or group of buildings and the space within the site surrounding those buildings, which have as their principal purpose human occupancy or habitation. "Practice of architecture" does not include the practice of

engineering as defined in the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] but may include such engineering work as is incidental practice;

H. "project" means the building or group of buildings and the space within the site surrounding the buildings as defined by the construction documents; and

I. "responsible charge" means that all architectural services have been or will be performed under the direction, guidance and restraining power of a registered architect who has exercised professional judgment with respect thereto.

History: 1978 Comp., § 61-15-2, enacted by Laws 1979, ch. 362, § 2; 1987, ch. 282, § 3; 1999, ch. 263, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

Repeals and reenactments. — Laws 1979, ch. 362, § 2, repealed former 61-15-2 NMSA 1978, relating to definitions of "practice of architecture," "general administration of construction" and "building," and enacted a new 61-15-2 NMSA 1978.

The 1999 amendment, effective June 18, 1999, in Subsection B, inserted "as defined by rule of the board", substituted "predesign services, programming and planning, providing designs" for "planning, providing preliminary studies, designs", substituted "administration of construction contracts, coordination of technical submissions prepared by others and such" for "and the observation of construction for the purpose of assuring substantial compliance with drawings and specifications and include such" in the first sentence, deleted language allowing engineers to engage in activities properly classified as architecture insofar as it is incidental to work as an engineer, and added the language beginning "codes, rules and ordinances" at the end of the subsection; in Subsection D,

substituted the term "construction administration" for the term "construction observation of a construction contract" twice and deleted "periodic" preceding "observation"; deleted former Subsection E, which defined "direct supervision"; added Subsections E, F, H and I, and redesignated former Subsection F as Subsection G; and in Subsection G, substituted "architectural services" for "any service which requires architectural education, training and experience" in the first sentence, and added the second sentence.

The 1987 amendment, effective June 19, 1987, alphabetized and relettered the subsections; rewrote Subsection B; in Subsection D substituted "construction observation of a construction contract" for "general administration of a construction contract" at the beginning, and added "when performed by a person engaged in the practice of architecture" to the end of the first sentence and added the second sentence; inserted Subsection E; and rewrote Subsection F.

ANNOTATIONS

Law reviews. — For note, "Police Power and the Design of Buildings," see 5 Nat. Res. J. 122 (1965).

61-15-3. Board of examiners for architects created; terms; qualifications. (Repealed effective July 1, 2024.)

A. The "board of examiners for architects" is created consisting of seven members appointed by the governor for staggered terms of three years each. Six of the members shall be architects having ten years or more experience in the profession, five years of which shall have been in responsible charge of architectural projects, and shall have been registered as architects in New Mexico for at least five years. One of these six architects shall be in architectural education in an accredited college of architecture, and one of the six architects shall be from the public sector and not in private practice. The seventh member shall be a public member who is a voting member. The public member of the board shall not have been licensed as an architect, nor shall the public member have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Each member of the board shall be at least thirty years of age, a citizen of the United States and a resident of New Mexico for at least five years prior to the date of appointment.

C. Members of the board shall be appointed for staggered terms of three years each made in such a manner that the terms of not more than two members expire on June 30 of each year. Each member shall serve until a successor has been appointed and qualified. A vacancy shall be filled for the unexpired term by appointment by the governor of a person having similar qualifications as the member that the person replaces. Each member of the board whose term has not expired on the effective date of this section shall serve out the member's unexpired term.

D. Each member of the board shall receive a certificate of appointment from the governor and, before beginning the member's term of office, shall file with the secretary of state the constitutional oath of office. The governor may remove any member from the board for the neglect of any duty required by law, for incompetence or, if the member is a licensed architect, for any improper or unprofessional conduct as defined by rules of the board.

E. The board shall elect a chair, a vice chair and a secretary and any other officers it deems necessary.

History: 1978 Comp., § 61-15-3, enacted by Laws 1979, ch. 362, § 3; 1987, ch. 282, § 4; 2017, ch. 52, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

Cross references. — For termination of board, see 61-15-13 NMSA 1978.

For the constitutional oath of office, see N.M. Const., art. XX, § 1.

Repeals and reenactments. — Laws 1979, ch. 362, § 3, repealed former 61-15-3 NMSA 1978, relating to the creation of a state board of examiners for architects, and enacted a new 61-15-3 NMSA 1978.

The 2017 amendment, effective June 16, 2017, required that one of the six architects on the board of examiners for architects be from the public sector, and made certain technical changes; in Subsection A, after the subsection designation, deleted "There is created a" and added "The", after "architects", added "is created", and after "accredited college of architecture," deleted "The seventh member shall be a public member who is a voting member. The public member of the board shall not have been licensed as an architect, nor shall the public member" and added "and one of the six architects shall be from the public sector and not in private practice. The seventh member shall be a public member who is a voting member. The public member of the board shall not have been licensed as an architect, nor shall the public member"; in Subsection D, after "as defined by", deleted "regulations" and added "rules"; and in Subsection E, replaced "chairman" with "chair" throughout the subsection.

Temporary provisions. — Laws 2017, ch. 52, § 21 provided that in carrying out the statutory requirement to

replace professional members with public members on the board of examiners for architects and the private investigations advisory board, the governor shall appoint a public member to replace the applicable professional member whose term first expires after the effective date of this act. If a vacancy occurs in an applicable professional member position prior to the expiration of that term, the governor shall appoint a public member, and that position shall become a public member position.

The 1987 amendment, effective June 19, 1987, in the first sentence in Subsection A, substituted "seven members" for "five members", in the second sentence substituted "six" for "four" at the beginning and inserted "five years of which shall have been in responsible charge of architectural projects" following "experience in the profession", inserted the present fourth sentence, in the fifth sentence substituted "seventh" for "fifth" and inserted "who is a voting member" at the end; in Subsection C deleted from the end "terms, and a public member shall be appointed upon the occurrence of the first vacancy on the board"; added Subsection E; and made numerous minor changes in language and punctuation throughout the section.

"Effective date of this section". — The phrase "effective date of this section", referred to near the end of Subsection C, appears in Laws 1979, ch. 362, § 3 which was effective on June 16, 1979.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 6 C.J.S. Architects §§ 7, 9, 10.

61-15-4. Powers and duties of the board. (Repealed effective July 1, 2024.)

A. The board shall hold at least four regular meetings each year. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. A majority of the board members constitutes a quorum.

B. A board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person if:

- (1) each member participating by conference telephone can be identified when speaking;
- (2) all participants are able to hear each other at the same time; and
- (3) members of the public attending the meeting are able to hear all board members who speak during the hearing.

C. The board may establish committees to carry out the provisions of the Architectural Act. The board or any committee of the board shall have the power to subpoena any witness, to administer oaths and to take testimony concerning matters within its jurisdiction. It is within the jurisdiction of the board to determine and prescribe by rules promulgated in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] the professional and technical qualifications necessary for the practice of architecture in New Mexico. The board shall adopt and have an official seal, which shall be affixed to all certificates of registration granted, and shall not make rules inconsistent with law.

D. The board may offer, engage in and promote educational and other activities as it deems necessary to fulfill its duty to promote the public welfare.

E. The board may, for the purpose of protecting the citizens of New Mexico and promoting current architectural knowledge and practice, promulgate rules establishing continuing education requirements as a condition of registration renewal.

F. Members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance. All expenses certified by the board as properly and necessarily incurred in the

discharge of its duties, including authorized reimbursement and necessary expenses incident to cooperation with like boards of other states, shall be paid by the state treasurer out of the "fund of the board of examiners for architects" on the warrant of the secretary of finance and administration issued upon vouchers signed by the chair or the chair's designee; provided, however, that at no time shall the total warrants issued exceed the total amount of funds accumulated under the Architectural Act. All money derived from the operation of the Architectural Act, not including fines, shall be deposited with the state treasurer, who shall keep the money in the fund of the board of examiners for architects.

G. The board shall by rule provide for the examinations required for registration. The board shall keep a complete record of all examinations.

H. Upon application for registration, upon a prescribed form and upon payment by the applicant of a fee set by the board, the board shall consider the application and shall issue a certificate of registration as an architect to any person who submits evidence satisfactory to the board that the person is fully qualified to practice architecture.

I. It is the duty of the board to report to the district attorney of the district where the offense was committed any criminal violation of the Architectural Act.

J. The board may deny, review, suspend or revoke a registration to practice architecture and may censure, fine, reprimand and place on probation and stipulation any architect in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for any cause as stated in the Architectural Act.

K. The board, in cooperation with the state board of licensure for professional engineers and professional surveyors and the board of landscape architects, shall create a joint standing committee to be known as the "joint practice committee". In order to safeguard life, health and property and to promote public welfare, the purpose of the committee is to promote and develop the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of the committee and its duties and powers shall be in accordance with identical resolutions adopted by each board.

L. Pursuant to the notice and hearing requirements of the Uniform Licensing Act, the board may impose a civil penalty in an amount not to exceed seven thousand five hundred dollars (\$7,500) for each violation on a person found to be engaging in the practice of architecture without being registered pursuant to the Architectural Act. Civil penalties shall be deposited to the credit of the current school fund as provided in Article 12, Section 4 of the constitution of New Mexico.

History: Laws 1931, ch. 155, § 3; 1939, ch. 82, § 3; 1941 Comp., § 51-1403; 1953 Comp., § 67-12-3; Laws 1959, ch. 12, § 1; 1963, ch. 43, § 16; 1977, ch. 247, § 174; 1979, ch. 362, § 4; 1987, ch. 282, § 5; 1999, ch. 263, § 2; 2017, ch. 107, § 1; 2022, ch. 39, § 67.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of examiners for architects is required to follow the provisions of the State Rules Act when promulgating rules, excluded money collected for fines from being deposited with the state treasurer, and provided that civil penalties be deposited to the credit of the current school fund; in Subsection C, after "prescribe by rules", added "promulgated in accordance with the State Rules Act", after "certificates of registration granted, and", deleted "may" and added "shall not", and after "make rules", deleted "not"; in Subsection E, after "knowledge and practice", deleted "adopt" and added "promulgate"; in Subsection F, after "operation of the Architectural Act", added "not including fines"; and in Subsection L, after "pursuant to the Architectural Act", added the remainder of the subsection.

The 2017 amendment, effective June 16, 2017, provided that the board of examiners for architects may impose a civil penalty not to exceed seven thousand five hundred dollars (\$7,500) for each violation against any person engaged in the practice of architecture without a license; in Subsection K, after "state board of", deleted

"registration" and added "licensure", and after "engineers and", deleted "land" and added "professional"; and added Subsection L.

The 1999 amendment, effective June 18, 1999, added Subsections B, D, E, and J, and redesignated subsequent subsections accordingly; added the first sentence of Subsection C; in Subsection F, deleted "except for the secretary who shall receive, in addition, a salary to be set by the board" at the end of the first sentence, and substituted "chair or the chair's designee" for "chairman and secretary or by two other members and the secretary of the board" in the second sentence; in Subsection G, substituted "by rule provide for the examinations required for registration" for "hold at least once each year an examination of applicants for registration, at a time and place designated by the board" in the first sentence, and deleted "written or oral" at the end of the last sentence; substituted "criminal violation" for "person violating any provision" in Subsection I; deleted former Subsection G, relating to the board's right to refuse to issue, to suspend, or to revoke any license for any of the grounds set forth in 61-15-12 NMSA 1978 or for any violation of the Architectural Act; and in Subsection K, deleted "architect-engineer-landscape architect" preceding "joint practice committee" in the first sentence, deleted the former second sentence, which read "The committee shall have as its purpose the resolution of disputes concerning the professions", and added the next-to-last sentence.

The 1987 amendment, effective June 19, 1987, in Subsection A substituted "at least four" for "a meeting

within sixty days after its members are first appointed and thereafter shall hold at least two" in the first sentence and added the last sentence; in Subsection C, in the last sentence, substituted "fund of the board of examiners for architects" for "separate fund hereinafter designated"; in Subsection D added the last sentence; in Subsection E substituted "a fee set by the board" for "a fee of fifty dollars (\$50.00)"; in Subsection H in the first sentence, inserted "and the board of landscape architects" following "land surveyors", inserted "landscape architect" in the committee name, and in the second sentence deleted "two" preceding "professions"; and made minor language changes throughout the section.

ANNOTATIONS

No fee charged for registration certificate. — A plain reading of Subsection E (now Subsection H) discloses that the board is required to issue a certificate of registration to an applicant upon being satisfied of the applicant's qualifications. No mention is made in the section of any fee to be charged for the architect's first certificate of registration. 1966 Op. Att'y Gen. No. 66-44.

Application fee not payable in installments. — This section clearly prescribes an application fee of \$50 which must be paid in its entirety at the time the application is made. There is no provision or even an indication in the law which would permit payment of the fee in installments. 1966 Op. Att'y Gen. No. 66-44 (rendered under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 6 C.J.S. Architects §§ 7, 9, 10.

61-15-4.1. Repealed.

Repeals. — Laws 1987, ch. 282, § 15 repeals 61-15-4.1 NMSA 1978, as enacted by Laws 1983, ch. 63, § 1 relating to development, adoption and enforcement of rules

governing the practice of architecture on public projects, effective June 19, 1987. For former provisions see the 1986 Cumulative Supplement.

61-15-5. Additional duties of the board. (Repealed effective July 1, 2024.)

A. The board shall keep a record of its proceedings. The records of the board shall be prima facie evidence of the proceedings of the board set forth in the record and a transcript of the record, duly certified by the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

B. The board shall keep a register of all applications for registration, which shall show the name, age and residence of each applicant, the date of application, the applicant's place of business, the applicant's educational and other qualifications, whether an examination was required, whether the applicant was rejected, whether a certificate of registration was granted, the date of the action of the board and any other information deemed necessary by the board.

C. Annually, the board shall submit to the governor a report of its transactions of the preceding year accompanied by a complete statement of the receipts and expenditures of the board. The report shall be available to the public.

D. Board records and papers that are of a confidential nature and are not public records include examination material for examinations not yet given, file records of examination problem solutions, letters of inquiry and references concerning applicants, board inquiry forms concerning applicants and investigation files. All data, communications and information acquired by the board relating to actual or potential disciplinary action is confidential and shall not be disclosed except to the extent necessary to fulfill the duties of the board.

E. A roster showing the names and addresses of all registered architects shall be prepared annually by the board and shall be made available to each registered architect and placed on file with the secretary of state. Copies of the roster may be distributed or sold to the public.

F. The board shall, by rule, set application, registration, renewal, examination and other fees.

G. The board may, by rule, set criteria for the training of intern architects.

History: Laws 1931, ch. 155, § 4; 1939, ch. 82, § 4; 1941 Comp., § 51-1404; 1953 Comp., § 67-12-4; 1987, ch. 282, § 6; 1999, ch. 263, § 3; 2017, ch. 107, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided an exception to the provision prohibiting the disclosure of certain confidential data, communications and information, allowing for the board of examiners for architects to disclose such information to the extent necessary

to fulfill the duties of the board; and in Subsection D, after "shall not be disclosed", added "except to the extent necessary to fulfill the duties of the board".

The 1999 amendment, effective June 18, 1999, in Subsection C, deleted "on or before August 30" following "Annually", deleted "attested by affidavits of its chairman and secretary" at the end of the first sentence, and added the last sentence; in Subsection D, deleted "where any investigation is still pending and other materials of like confidential nature" at the end of the first sentence, and added

the last sentence; in Subsection E, inserted "annually", deleted reference to a supplement to the roster, and substituted "shall be made available" for "shall be mailed"; and added Subsections F and G.

The 1987 amendment, effective June 19, 1987, rewrote the section to the extent that a detailed comparison is impracticable.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 5 Am. Jur. 2d Architects § 1 et seq.
6 C.J.S. Architects § 7.

61-15-6. Requirements for registration. (Repealed effective July 1, 2024.)

- A. To be eligible for registration, a person shall be of good character and repute.
- B. An applicant for registration shall submit evidence satisfactory to the board that the applicant is fully qualified to practice architecture in New Mexico.
- C. All applicants for registration shall be required to pass any examinations required by the board.
- D. All applicants for registration shall be required to complete all forms and affidavits required by the board.
- E. An applicant for registration by examination shall have:
 - (1) a professional degree from an architectural program accredited by the national architectural accreditation board or its equivalent as prescribed by rule;
 - (2) certified completion of the architectural experience program of the national council of architectural registration boards; and
 - (3) passed all divisions of the architectural registration examination.
- F. A person registered as an architect in another jurisdiction who has been certified by the national council of architectural registration boards may apply for registration without an examination by presenting for review by the board:
 - (1) a certificate of good standing issued by the national council of architectural registration boards or its equivalent as prescribed by rule;
 - (2) evidence satisfactory to the board of qualification in comprehensive design as prescribed by rule of the board; and
 - (3) evidence satisfactory to the board of meeting all of the requirements prescribed by rule of the board.
- G. A person registered as an architect in another jurisdiction who has held the registration in a position of responsibility for a period of time as prescribed by the rule of the board and who does not have a certificate issued by the national council of architectural registration boards may apply for registration by presenting evidence of broad experience as an architect, as required by rule of the board, of academic training and work experience directly related to architecture, including evidence satisfactory to the board of qualification in comprehensive design.
- H. No sole proprietorship, partnership, corporation, association or other business entity shall be registered under the Architectural Act. No sole proprietorship, partnership, corporation, association or other business entity shall practice or offer to practice architecture in the state except as provided in Subsections I, J and K of this section.
- I. Registered architects may practice under the Architectural Act as individuals or through partnerships, associations, corporations or other business entities.
- J. In the case of practice through a business entity primarily offering architectural services, at least one of the owners shall be a registered architect under the Architectural Act, and registered architects shall control a majority interest in the business entity. All plans, designs, drawings, specifications or reports issued by or for the business entity for a project physically located within New Mexico shall bear the seal of a registered architect who shall be responsible for such work.
- K. In the case of practice through a business entity primarily offering engineering services, registrants under the Architectural Act or licensees under the Engineering and Surveying Practice Act [Chapter 61, Article 23 NMSA 1978] may offer architectural services; provided that:
 - (1) an architect registered in New Mexico is in responsible charge of the architectural services of the business entity and has the authority to bind the entity by contract;

(2) the architect in responsible charge provides the board with an affidavit documenting the architect's authority;

(3) all plans, designs, drawings, specifications or reports that are involved in the practice and issued by or for the business shall bear the seal and signature of the architect in responsible charge of the work when issued; and

(4) the architect shall notify the board of a termination of the architect's authority.

L. A business entity that offers project delivery through a teaming of architectural and construction services may render architectural services only with an architect in responsible charge who is registered in New Mexico. This provision does not apply to business entities providing services that are exempted by Section 61-15-9 NMSA 1978.

History: Laws 1931, ch. 155, § 5; 1939, ch. 82, § 5; 1941 Comp., § 51-1406; 1953 Comp., § 67-12-5; Laws 1979, ch. 362, § 5; 1987, ch. 282, § 7; 1999, ch. 263, § 4; 2017, ch. 107, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

Cross references. — For registration fee, see 61-15-4E NMSA 1978.

For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

For the incorporation of architects as a professional corporation, see 53-6-1 NMSA 1978 et seq.

The 2017 amendment, effective June 16, 2017, revised the requirements for applicants to receive a certificate of registration as an architect, including completion of the architectural experience program of the national council of architectural registration boards, submission of evidence satisfactory to the board of examiners for architects of the applicant's qualification in comprehensive design, and in the case of practice through a business entity, required that registered architects control a majority interest in the business entity, and provided rules for business entities primarily offering engineering services and for business entities offering project delivery through a teaming of architectural and construction services; in Subsection E, Paragraph E(2), after "completion of the", deleted "intern training" and added "architectural experience"; in Subsection F, in the introductory clause, after "presenting", added "for review by the board", in Paragraph F(2), after "qualification in", added "comprehensive", after "design", deleted "for seismic forces" and added "as prescribed by rule of the board; and", and added Paragraph F(3); in Subsection G, after "responsibility for", deleted "at least five years" and added "a period of time as prescribed by the board", and after "related to architecture", added "including evidence satisfactory to the board of qualification in comprehensive design"; in Subsection J, after "through a", deleted "partnership" and added "business entity primarily", after "one of the", deleted "partners" and added "owners", after "Architectural Act, and", added "registered architects shall control a majority interest in the business entity", and after "issued by or for the", deleted "partnership" and added "business entity for a project physically located within New Mexico"; in Subsection K, in the introductory clause, after "business entity", deleted the former language, which related to registered architects being in responsible charge of the activities of the business entity, and added the current language, and added Paragraphs K(1) through K(4); and added Subsection L.

The 1999 amendment, effective June 18, 1999, rewrote Subsection B, which formerly read "An applicant for registration shall have been actively engaged for eight years or more in architectural work of a character satisfactory to the board. However, each year of teaching or study of architecture satisfactorily completed in a school of architecture of a standing satisfactory to the board shall be equivalent to one year of professional experience. In addition, effective January 1, 1990, an applicant for examination for

registration must have a professional degree from an accredited architectural program in order to be eligible for the examination for registration"; substituted "any examinations required" for "a written examination and may be required to pass an oral examination as required" in Subsection C; deleted former Subsection D, which read "In determining the qualifications of applicants for registration as architects, a majority vote of the members of the board shall be required"; added Subsections D to G, and redesignated the subsequent subsections accordingly; inserted "or other business entity" twice in Subsection H; inserted "or other business entities" in Subsection I; inserted "offering architectural services" in Subsection J; and in Subsection K, substituted "business entity" for "association or corporation" throughout the subsection, substituted "is an employee of the business entity with the authority to bind the entity by contract" for "has the authority to bind the association or corporation by contract" in the first sentence, substituted "responsible charge" for "direct supervision" in the next-to-last sentence, and added the last sentence.

The 1987 amendment, effective June 19, 1987, divided the former Subsection A into the present Subsections A and B and relettered the subsequent subsections; in Subsection B substituted "professional experience" for "such active engagement" at the end of the second sentence and added the third sentence; in Subsection D deleted the former last sentence which read "In case the board denies the issuance of a certificate to an applicant, one-half of the registration fee deposited shall be returned by the board to the applicant"; in Subsection E substituted "sole proprietorship" for "firm" where it appears in the first and second sentences, deleted "joint stock" preceding "association" both places that word appears and substituted "F, G and H" for "E, F and G"; in Subsection F substituted "individuals or through partnerships" for "individual partners or through joint stock"; in Subsection H deleted "joint stock" preceding "association" in five places, and substituted "direct supervision of" for "responsible charge of and directly responsible for" at the end; and made minor language changes throughout the section.

ANNOTATIONS

United States citizenship is not required to be an architect licensed to practice in New Mexico. 1941-42 Op. Att'y Gen. No. 42-4177.

Applicant entitled to 50% refund upon examination failure. — Because failure to pass the examinations required by the board is a statutory basis for refusal of the registration certificate, the board must refund to the applicant 50% of the registration fee he deposited. 1966 Op. Att'y Gen. No. 66-79.

Full fee required with subsequent application. — A failure of all or a portion of the examination required by the board necessitates the denial of the issuance of a certificate of registration to an applicant, and the applicant must then pay the full application fee before he may again be considered by the board for issuance of a certificate of registration even though he might not be required

to take all sections of the examination on his subsequent attempts. 1966 Op. Att'y Gen. No. 66-79 (rendered under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 5 Am. Jur. 2d Architects § 1 et seq.

Validity of license statute or ordinance which discriminates against nonresidents, 61 A.L.R. 337, 112 A.L.R. 63.

Practice of architecture by corporation, 56 A.L.R.2d 726.

Revocation or suspension of license to practice architecture, 58 A.L.R.3d 543.

Grant or denial of license to practice architecture, 2 A.L.R.4th 1103.

6 C.J.S. Architects §§ 7 to 15.

61-15-7. Certificates of registration. (Repealed effective July 1, 2024.)

A. The board shall issue a certificate of registration to each architect. An architect may, upon registration, obtain the seal of the design authorized by the board, which bears the registrant's name and the legend "Registered Architect—State of New Mexico". All plans, specifications, plats and reports prepared by an architect or under an architect's responsible charge shall be signed and sealed by that architect, including all plans and specifications prepared by an architect or under an architect's responsible charge on work described in Subsection B of Section 61-15-9 NMSA 1978.

B. Certificates of registration shall be valid for a period of time as set by rule and shall be invalid after the date of expiration unless renewed.

C. Except as provided in Section 61-1-34 NMSA 1978, issuance or renewal may be effected at any time prior to expiration by the payment of a fee in an amount set by the board. Fees shall be paid to the board.

D. The failure on the part of any registrant to renew a certificate prior to expiration shall not deprive that person of the right of renewal within three years of the expiration date of the certificate. Except as provided in Section 61-1-34 NMSA 1978, reinstatement of the certificate may be effected in a manner prescribed by rule and may include penalties and fees.

E. Except as provided in Section 61-1-34 NMSA 1978, renewal of a certificate that has been expired for more than three years shall require a demonstration of continued proficiency and qualification to practice architecture in addition to payment of penalties and fees and such other requirements as may be required by rule.

History: Laws 1931, ch. 155, § 6; 1939, ch. 82, § 6; 1941 Comp., § 51-1406; 1953 Comp., § 67-12-6; Laws 1961, ch. 153, § 1; 1975, ch. 175, § 1; 1979, ch. 362, § 6; 1987, ch. 282, § 8; 1999, ch. 263, § 5; 2021, ch. 92, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided for the waiver of certificates of registration fees for military service members and veterans; in Subsection C, added "Except as provided in Section 61-1-34 NMSA 1978, issuance or"; and in Subsections D and E, added "Except as provided in Section 61-1-34 NMSA 1978".

The 1999 amendment, effective June 18, 1999, in Subsection A, added the first sentence, and substituted the language beginning "prepared by an architect or under" for "issued by a registrant shall be stamped with the seal during the life of a registrant's certificate" in the last sentence; substituted "be valid for a period of time as set by rule and shall be invalid after the date of expiration" for "expire on the last day of December following their issuance or renewal and shall be invalid after that date" in Subsection B; in Subsection C, substituted "prior to expiration" for "during December" in the first sentence, and deleted the former second sentence, which read "The registrant shall satisfy the board that he is still proficient and qualified to practice architecture, as required by the board"; in Subsection D, substituted "prior to expiration" for "annually in December", substituted "within three years of the expiration date of the certificate" for "thereafter, but the fee to be paid for the renewal of a certificate after December shall be increased ten percent for each

month or a fraction of a month that the payment for renewal is delayed", and added the last sentence; and added Subsection E.

The 1987 amendment, effective June 19, 1987, in Subsection C deleted from the end of the first sentence "but not to exceed fifty dollars (\$50.00) for a legal resident and one hundred dollars (\$100) for a nonresident" and deleted from the last sentence "the secretary of" preceding "the board"; in Subsection D deleted the former last sentence which read "The maximum fee for a delayed renewal shall not exceed twice the normal fee for each and every year that registrant remains in default"; and made minor changes in language and punctuation throughout the section.

ANNOTATIONS

Initial registration certificate free. — This section does not provide for any registration fee to be collected at the time the applicant has been accepted by the board as being entitled to registration as a New Mexico architect. Thus, a New Mexico architect appears to be entitled to his original certificate of registration free of charge. 1966 Op. Att'y Gen. No. 66-44.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 5 Am. Jur. 2d Architects § 1 et seq.

Failure of architect to procure license as affecting validity or enforceability of contracts, 30 A.L.R. 851, 42 A.L.R. 1226, 118 A.L.R. 646.

What amounts to architectural or engineering services within license requirements, 82 A.L.R.2d 1013.

6 C.J.S. Architects §§ 7 to 15.

61-15-8. Exemptions; from registration. (Repealed effective July 1, 2024.)

A. The following are exempt from the provisions of the Architectural Act:

(1) architects who have no established places of business in this state and who are not registered pursuant to the Architectural Act may act as consulting associates of an architect registered under the provisions of the Architectural Act; provided that the architects are registered as architects in another jurisdiction; and

(2) architects acting solely as officers or employees of the United States or any interstate railroad system or architects acting on a federally owned site where architectural services are performed only on that site and are subject to federal jurisdiction.

B. Nothing in the Architectural Act shall prevent a registered architect from employing non-registrants to work under the architect's responsible charge.

History: Laws 1931, ch. 155, § 7; 1939, ch. 82, § 7; 1941 Comp., § 51-1407; 1953 Comp., § 67-12-7; 1987, ch. 282, § 9; 1999, ch. 263, § 6; 1999, ch. 272, § 28; 2017, ch. 107, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided an additional exemption from the provisions of the Architectural Act; in Subsection A, Paragraph A(2), after "railroad system", added "or architects acting on a federally owned site where architectural services are performed only on that site and are subject to federal jurisdiction".

The 1999 amendment, effective June 18, 1999, in the catchline, added "from registration"; rewrote Subsection A(1), which formerly read "architects who are not legal residents of and have no established places of business in this state who are acting as consulting associates of a legal resident architect registered under the provisions of the Architectural Act, provided the nonresident architects are qualified for such professional service in their own state or country; and"; and rewrote Subsection B, which formerly read "Nothing in the Architectural Act shall prevent the draftsmen, students, superintendents and other employees of lawfully practicing architects under the provisions of the Architectural Act from acting under the instructions, control or supervision of the employer or shall prevent the employment of superintendents on the construction, enlargement or alterations of buildings or any appurtenances thereto or shall prevent those superintendents from acting under the direct supervision of registered architects by whom the plans and specifications of

any building, enlargements, constructions or alterations were prepared".

The 1987 amendment, effective June 19, 1987, substituted "the Architectural Act" for "this Act" throughout the section; redesignated the former Subsections B and C as Paragraph (1) and (2) of Subsection A; deleted the former Subsection D as set out in the 1986 Replacement Pamphlet; redesignated the former Subsection E as Subsection B; and in Subsection B, deleted "clerks of the work" preceding "superintendents" near the beginning and substituted "direct supervision" for "immediate personal supervision" near the end; and made minor changes in language and punctuation throughout the section.

ANNOTATIONS

Substantial compliance suffices. — Where an independent school district hires a registered and resident New Mexico architect to design and supervise the construction of a new junior high school and employs a firm of out-of-state architects and engineers and where the work is commenced and the architectural design, preliminary surveys and climate control is complete, the New Mexico architect dies, prior to the actual finalization of the plans, substantial compliance exists with the Architectural Act. The school district may construct the proposed project based upon the plans completed by the out-of-state firm. However, it must be emphasized that any further architectural services of any nature must be performed by a registered resident pursuant to Section 67-12-8 (now Section 61-15-9 NMSA 1978). 1965 Op. Att'y Gen. No. 65-07.

Law reviews. — For note, "Police Power and the Design of Buildings," see 5 Nat. Res. J. 122 (1965).

61-15-9. Project exemptions. (Repealed effective July 1, 2024.)

A. The state and its political subdivisions are not exempt from the requirements of the Architectural Act.

B. A person who is not an architect may prepare building plans and specifications, unless the building plans and specifications involve public safety or health, but the work shall be done only on:

(1) single-family dwellings not more than two stories in height;

(2) multiple dwellings not more than two stories in height containing not more than four dwelling units of wood-frame construction; provided that this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four dwelling units on any lawfully divided lot;

(3) garages or other structures not more than two stories in height that are appurtenant to buildings described in Paragraphs (1) and (2) of this subsection; or

(4) nonresidential buildings, as defined in applicable state or local building codes, unless the building code official having jurisdiction has found that the submission of plans, drawings, specifications or calculations prepared and designed by an architect or engineer licensed by the state is necessary to obtain compliance with minimum standards governing the preparation of building plans and specifications adopted by the construction industries division of the regulation and licensing department. The construction industries division shall set, by rule, minimum standards for preparation of building plans and specifications pursuant to this paragraph.

C. Nothing in the Architectural Act shall require the state or a political subdivision of the state to secure the services of an architect or engineer for a public work project that consists of repair, replacement or remodeling if the alteration does not affect structural or life safety features of a building and does not require the issuance of a building permit under any applicable code.

D. A New Mexico registered professional engineer who has complied with all the laws of New Mexico relating to the practice of engineering has a right to engage in the incidental practice, as defined by rule, of activities properly classified as architectural services; provided that the engineer does not make any representation as being an architect or as performing architectural services; and further provided that the engineer performs only that part of the work for which the engineer is professionally qualified and uses qualified professional engineers, architects or others for those portions of the work in which the contracting professional engineer is not qualified. The engineer shall assume all responsibility for compliance with all laws, codes, rules and ordinances of the state or its political subdivisions pertaining to documents bearing an engineer's professional seal.

History: Laws 1931, ch. 155, § 8; 1939, ch. 82, § 8; 1941 Comp., § 51-1408; 1953 Comp., § 67-12-8; Laws 1963, ch. 279, § 2; 1971, ch. 190, § 1; 1975, ch. 247, § 1; 1977, ch. 53, § 1; 1979, ch. 362, § 7; 1981, ch. 75, § 1; 1983, ch. 63, § 2; 1987, ch. 282, § 10; 1999, ch. 263, § 7; 1999, ch. 272, § 29; 2017, ch. 107, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

The 2017 amendment, effective June 16, 2017, revised certain exemptions from the requirements of the Architectural Act; in Subsection B, Paragraph B(4), after "as defined in", deleted "uniform" and added "applicable state or local", after "building", deleted "code" and added "codes", and after "shall set, by", deleted "regulation" and added "rule"; and in Subsection D, after "the engineer does not", deleted "hold himself out to be" and added "make any representation as being".

The 1999 amendment, effective June 18, 1999, rewrote the catchline, which formerly read "Restrictions"; rewrote Subsection A, which related to public work; in Subsection B, in the introductory language, substituted the language ending "building plans and specifications" for "Nothing in the Architectural Act shall prevent any person from preparing building plans and specifications without being registered"; in Subsection C, substituted the language beginning "if the alteration does not affect" for "of nonstructural elements of an existing structure"; and added Subsection D.

The 1987 amendment, effective June 19, 1987, in Subsection B, in the opening clause, substituted "building plans" for "architectural plans" the first occurrence, substituted "building plans" for "plans" the second occurrence and deleted from the end "residences of less than three stories or the work shall be done on commercial, industrial or semi-public buildings, the construction cost of which does not exceed eighty thousand dollars (\$80,000)", and added Paragraphs (1) through (4); and deleted the former Subsection C as set out in the 1986 Replacement Pamphlet and redesignated the former Subsection D accordingly.

ANNOTATIONS

Substantial compliance suffices. — Where an independent school district hires a registered and resident New Mexico architect to design and supervise the construction of a new junior high school and employs a firm of out-of-state architects and engineers and where the work is commenced and the architectural design, preliminary surveys and client control is complete, the New Mexico architect dies, prior to the actual finalization of the plans, substantial compliance exists with the Architectural Act. The school district may construct the proposed project based upon the plans completed by the out-of-state firm. However, it must be emphasized that any further architectural services of any nature must be performed by a registered resident of New Mexico pursuant to this section. 1965 Op. Att'y Gen. No. 65-07.

Unlicensed architect allowed on less than three-storied residence. — An individual, firm, or corporation may practice architecture without being registered, where the work is done on residences of less than three stories. 1933-34 Op. Att'y Gen. No. 33-560.

Licensed engineer not restricted. — A professional licensed engineer does not violate this section by drawing plans and constructing a building, since authority to do so is conferred upon him by law. 1939-40 Op. Att'y Gen. No. 39-3126 (rendered prior to enactment of Engineering and Land Surveying Practice Act).

Licensed engineers not affected. — Section 10 of Laws 1939, ch. 82 does not repeal the matter pertaining to engineers in 67-21-1 to 67-21-25, 1953 Comp. (now repealed) since these acts must be read separately, similar powers being conferred upon professional engineers as are granted to architects in this act. 1939-40 Op. Att'y Gen. No. 39-3205 (rendered prior to enactment of Engineering and Land Surveying Practice Act).

Law reviews. — For note, "Police Power and the Design of Buildings," see 5 Nat. Res. J. 122 (1965).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 5 Am. Jur. 2d Architects § 1 et seq.

6 C.J.S. Architects §§ 3, 7.

61-15-10. Violations; penalties. (Repealed effective July 1, 2024.)

A. A person who knowingly uses a forged architectural registration seal on a document for the purpose of permitting the constructing of a building for human habitation or occupancy is guilty of a fourth degree felony, punishable pursuant to Section 31-18-15 NMSA 1978.

B. Each of the following acts constitutes a misdemeanor, punishable pursuant to Section 31-19-1 NMSA 1978:

- (1) willfully forging or giving false evidence of any kind to the board or any board member for the purpose of obtaining a certificate of registration as an architect;
- (2) using or attempting to use an expired, suspended or revoked certificate of registration as an architect;
- (3) using or permitting another to use the person's official architect's seal to stamp or seal any documents that have not been prepared either by the architect or the architect's responsible charge;
- (4) engaging or offering to engage in the practice of architecture, unless exempted or duly registered to do so under the Architectural Act;
- (5) using a designation tending to imply to the public that the person is an architect unless:
 - (a) the person is duly registered to do so under the provisions of the Architectural Act;
 - (b) the title containing the designation is allowed by rule of the board; or
 - (c) the title containing the designation does not imply that the person using the designation, when describing occupation, business name or services, is offering to perform architectural services; or
- (6) procuring, aiding or abetting any violation of the provisions of the Architectural Act or the rules adopted by the board.

C. If, after a disciplinary hearing conducted in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the board determines that based on the evidence, a person committed a violation pursuant to the Architectural Act, the board, in addition to any other sanction, shall issue an order that imposes a civil penalty not to exceed seven thousand five hundred dollars (\$7,500) for each violation on the person. In determining the amount of the civil penalty, the board shall consider:

- (1) the seriousness of the violation;
- (2) the degree of harm inflicted on individuals or the public;
- (3) the economic benefit received by the person due to the violation;
- (4) the person's history of violations; and
- (5) any other aggravating or mitigating factors relating to the violation.

History: 1978 Comp., § 61-15-10, enacted by Laws 1979, ch. 362, § 8; 1987, ch. 282, § 11; 1999, ch. 263, § 8; 2017, ch. 107, § 6; 2022, ch. 39, § 68.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

Cross references. — For ceding fines to the current school fund, see N.M. Const., art. XII, § 4.

The 2022 amendment, effective May 18, 2022, clarified that the board of examiners for architects is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; and in Subsection C, after "disciplinary hearing", added "conducted in accordance with the Uniform Licensing Act".

The 2017 amendment, effective June 16, 2017, provided that the board of examiners for architects shall impose civil penalties not to exceed seven thousand five hundred dollars (\$7,500) for each violation of the Architectural Act, and provided considerations for determining the amount of the civil penalty; and added Subsection C.

The 1999 amendment, effective June 18, 1999, added Subsection A, redesignated the formerly undesignated introductory language of the section as the introductory language of Subsection B, and in that language,

substituted "pursuant to Section 31-19-1 NMSA 1978" for "upon conviction by a fine of not less than two hundred fifty dollars (\$250) or more than one thousand dollars (\$1,000) or by imprisonment not to exceed three months or both"; redesignated the former subsections as numbered paragraphs under Subsection B; deleted former Subsection A, which read "presenting or attempting to file as his own the certificate of registration as an architect of another person"; deleted former Subsection C, which read "falsely impersonating any other practitioner"; deleted "as defined in Section 61-15-2 NMSA 1978" following "practice of architecture" in Subsection B(4); rewrote Subsection B(5), which formerly read "using in connection with his name any designation tending to imply that he is a registered or licensed architect"; and added Subsection B(6).

The 1987 amendment, effective June 19, 1987, in the opening clause substituted "two hundred fifty dollars (\$250) or more than one thousand (\$1,000)" for "one hundred dollars (\$100) nor more than five hundred dollars (\$500)", in Subsection F substituted "registered" for "licensed" following "unless exempted or duly"; and made minor language changes throughout the section.

ANNOTATIONS

Designation "architect" restricted to those registered. — The designation of "architect" may not be used

by any individual or firm in New Mexico not registered as such in this state. 1949-50 Op. Att'y Gen. No. 49-5241. **Am. Jur. 2d, A.L.R. and C.J.S. references.** — 5 Am. Jur. 2d Architects § 23 et seq. 6 C.J.S. Architects § 3.

61-15-11. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Architectural Act [61-15-1.1 NMSA 1978].

History: 1953 Comp., § 67-12-10, enacted by Laws 1974, ch. 78, § 20; 1987, ch. 282, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

The 1987 amendment, effective June 19, 1987, substituted "the Architectural Act" for "Sections 67-12-1 through 67-12-10 NMSA 1953".

61-15-12. Disciplinary actions. (Repealed effective July 1, 2024.)

A. In accordance with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may refuse to issue, may suspend or may revoke any certificate of registration as an architect, and the board may impose disciplinary conditions, including a letter of censure or reprimand, a civil penalty pursuant to Section 61-15-10 NMSA 1978, probation, peer review, remedial education and testing and other conditions as deemed necessary by the board to promote the public welfare, upon satisfactory proof being made to the board that the registrant has:

- (1) engaged in any fraud or deceit in obtaining a certificate of registration;
- (2) made a false statement under oath or a false affidavit to the board;
- (3) engaged in gross negligence, incompetency or misconduct in the practice of architecture as set forth by rule;
- (4) stamped with the registrant's official seal any plans, specifications, plats or reports in violation of the Architectural Act;
- (5) practiced architecture without a valid and current registration in the jurisdiction in which the practice took place;
- (6) made any representation as being an architect without having a valid and current certificate of registration as an architect in the jurisdiction in which the representation took place;
- (7) violated any provisions of the Architectural Act or the rules adopted by the board;
- (8) refused to accept or to respond to a certified mail communication from the board;
- (9) failed to provide the board or its representatives in a timely manner all documentation or information in the registrant's possession or knowledge that has been requested by the board for the purposes of investigation of an alleged violation of the Architectural Act or the rules adopted by the board;
- (10) procured, aided or abetted a violation of the Architectural Act or the rules adopted by the board;
- (11) failed to comply with the minimum standards of the practice of architecture;
- (12) habitually or excessively used intoxicants or controlled substances; or
- (13) failed to report to the board any adverse actions taken against the registrant by another jurisdiction, any professional organization, any governmental or law enforcement agency or any court for an act or conduct that would constitute grounds for actions as provided by this section.

B. The board may deny access to examination, may refuse to issue, may suspend or may revoke any certificate of registration as an architect:

- (1) for any applicant found to have violated any provision of the Architectural Act or the rules adopted by the board; or
- (2) for any registrant or applicant who is convicted of a felony.

C. Disciplinary proceedings may be instituted by any person, shall be instituted by sworn complaint and shall conform to the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of the costs for the copy.

D. The board may modify any prior order of revocation, suspension or refusal to issue a certificate of registration of an architect, but only upon a finding by the board that there no longer exist any grounds for disciplinary action; provided, however, that any cessation of the practice of architecture for twelve months or more shall require the architect to undergo such additional examination as the board determines necessary.

E. Nothing in the Architectural Act shall be construed as requiring the board to report, for the institution of proceedings, minor violations of that act; provided that the board, after an informal hearing, determines that the public interest will be adequately served by a suitable written notice or warning or by the suspension of the offender's license or certificate of registration for a period not to exceed thirty days.

F. The applicant or registrant shall be liable for all costs of disciplinary proceedings unless exonerated and shall be liable for all costs associated with monitoring compliance with any disciplinary action.

History: 1978 Comp., § 61-15-12, enacted by Laws 1979, ch. 362, § 9; 1987, ch. 282, § 13; 1999, ch. 263, § 9; 2017, ch. 107, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-15-13 NMSA 1978.

The 2017 amendment, effective June 16, 2017, included the civil penalties provided for in Section 61-15-10 NMSA 1978 in the types of disciplinary action that the board of examiners for architects may impose for misconduct by registered architects; and in Subsection A, in the introductory clause, after "censure or reprimand", deleted "an administrative" and added "a civil", and after "penalty", added "pursuant to Section 61-15-10 NMSA 1978", and in Paragraph A(6), after the paragraph designation, deleted "represented himself to be" and added "made any representation as being".

The 1999 amendment, effective June 18, 1999, rewrote the section heading, which formerly read "Refusal, suspension or revocation of certificate of registration"; in Subsection A, in the introductory language, substituted the language beginning "and the board may impose disciplinary conditions" for "upon the grounds that the licensee

or applicant is" in the introductory language, in Paragraph (1) substituted "engaged in" for "found guilty by the board of", added Paragraph (2), in Paragraph (3) substituted "engaged in" for "guilty of" and inserted "as set forth by rule", in Paragraph (4) substituted "stamped" for "guilty of stamping", in Paragraph (5) substituted "practiced" for "guilty of practicing" and "registration in the jurisdiction in which the practice took place" for "license", in Paragraph (6) substituted "represented" for "guilty of representing" and added "in the jurisdiction in which the representation took place" at the end, deleted former Paragraph (6) which read "guilty of dishonorable or unprofessional conduct as defined by regulation of the board; or", deleted former Paragraph (7) which read "convicted of a felony", and added Paragraphs (7) to (13); added Subsection B, redesignating subsequent subsections accordingly; deleted "license or" preceding "certificate of registration" in Subsection D; and added Subsection F.

The 1987 amendment, effective June 19, 1987, in Subsection A added Paragraph (7) and made minor changes in language.

61-15-13. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The board of examiners for architects is terminated on July 1, 2023 pursuant to the provisions of the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Architectural Act until July 1, 2024. Effective July 1, 2024, the Architectural Act is repealed.

History: Laws 1979, ch. 362, § 10; 1981, ch. 241, § 28; 1983, ch. 63, § 3; 1987, ch. 282, § 14; 1987, ch. 333, § 8; 1993, ch. 83, § 4; 1999, ch. 263, § 10; 2005, ch. 208, § 14; 2011, ch. 30, § 4; 2017, ch. 52, § 6; 2017, ch. 107, § 8.

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024" in two places.

Laws 2017, ch. 52, § 6 and Laws 2017, ch. 107, § 8, both effective June 16, 2017, enacted identical amendments to this section. The section was set out as amended by Laws 2017, ch. 107, § 8. See 12-1-8 NMSA 1978.

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

The 1999 amendment, effective June 18, 1999, twice substituted "the Architectural Act" for "Chapter 61,

Article 15 NMSA 1978", substituted "July 1, 2005" for "July 1, 1999" and inserted "provisions of the" in the first sentence, substituted "July 1, 2006" for "July 1, 2000" in the second sentence, and substituted "July 1, 2006" for "July 1, 2000" in the last sentence.

The 1993 amendment, effective June 18, 1993, substituted "July 1, 1999" for "July 1, 1993" in the first sentence and "July 1, 2000" for "July 1, 1994" in the last two sentences; and made a minor stylistic change.

The 1987 amendments. — Laws 1987, ch. 282, § 14 and Laws 1987, ch. 333, § 8, both effective June 19, 1987, enacted identical amendments to this section. Both substituted "1993" for "1987" in the first sentence and "1994" for "1988" in the second and third sentences. The section is set out as amended by Laws 1987, ch. 333, § 8. See 12-1-8 NMSA 1978.

ARTICLE 16

Auctions

Sec. 61-16-1. Auctioneers; puffing; fees. Sec.

61-16-2. Puffing; illegal fees; penalty; civil liability.

61-16-3. Purpose.

61-16-4. Scope; auction sales exceptions.

61-16-5. Sales prohibited without license.

61-16-6. Licenses.

61-16-7. Application for license.

61-16-8. Bond.

61-16-9. Fees.

61-16-10. Inspectors.

61-16-11. Hearing.

61-16-12. Licenses limited.

61-16-13. Persons disqualified.

61-16-14. Offenses.

61-16-15. Penalties.

61-16-16. Suspension of license.

61-16-17. Recovery on bond.

61-16-1. Auctioneers; puffing; fees.

It is unlawful for any person who sells at public auction any personal property belonging to another:

- A. to bid on any article placed by him at auction; or
- B. employ or in any way allow puffers to bid for him at an auction.

History: Laws 1889, ch. 95, § 1; C.L. 1897, § 1290; Code 1915, § 377; C.S. 1929, § 10-101; 1941 Comp., § 51-1501; 1953 Comp., § 67-13-1; 2005, ch. 77, § 1.

The 2005 amendment, effective June 17, 2005, removes the limitation on the amount of the fee that an auctioneer may not receive from the owner of the goods auctioned.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 29, 30, 71 to 75.

Effect on auction sale of by-bidding or puffing, 46 A.L.R. 122.

Withdrawal of property from auction sale, 37 A.L.R.2d 1049.

Auctioneer's action for commissions against seller, 38 A.L.R.4th 170.

Auction sales under UCC § 2-328, 44 A.L.R.4th 110.

Liability of auctioneer under doctrine of strict products liability, 83 A.L.R.4th 1188.

7A C.J.S. Auctions and Auctioneers §§ 3, 15, 22.

61-16-2. [Puffing; illegal fees; penalty; civil liability.]

Any person whether as auctioneer or as a puffer of any auctioneer who shall violate the provisions of this chapter, shall be deemed guilty of a misdemeanor, and on conviction before any justice of the peace [magistrate] of the precinct where the offense shall have been committed, shall be fined in a sum not less than twenty-five [\$25.00] nor more than fifty dollars [\$50.00] and costs of prosecution, or by imprisonment in the county jail for no less than thirty days, and besides such person shall be bound to the person bidding at any such public auction and injured by the unlawful bidding of the auctioneer or his puffers in double the amount of the price of the articles such person bade on, to be recovered by civil action.

History: Laws 1889, ch. 95, § 2; C.L. 1897, § 1291; Code 1915, § 378; C.S. 1929, § 10-102; 1941 Comp., § 51-1502; 1953 Comp., § 67-13-2.

Cross references. — For the establishment and organization of magistrate courts, see 35-1-1 NMSA 1978 et seq.

Meaning of "this chapter". — The term "this chapter" apparently refers to Laws 1889, ch. 95, §§ 1 and 2, which are compiled as 61-16-1 and 61-16-2 NMSA 1978.

Abolishment of office of justice of the peace. —

The office of justice of the peace has been abolished by 35-1-38 NMSA 1978, and the jurisdiction, powers and duties conferred by law upon justices of the peace transferred to the magistrate courts. See N.M. Const., art. VI, § 31.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 29, 30, 77, 81, 82, 86.

7A C.J.S. Auctions and Auctioneers §§ 23, 25, 27.

61-16-3. Purpose.

The purpose of the present act [61-16-3 to 61-16-17 NMSA 1978] is to regulate auction sales of jewelry in order to prevent fraud, deception and misrepresentation upon the buying public at such sales. It is to be construed liberally to effectuate this purpose.

History: Laws 1941, ch. 45, § 1; 1941 Comp., § 51-1503; 1953 Comp., § 67-13-3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 8, 46.

Jewelry auctions, regulation and licensing of, 53 A.L.R.2d 1433.

7A C.J.S. Auctions and Auctioneers §§ 3, 8, 27.

61-16-4. Scope; auction sales exceptions.

A. Chapter 61, Article 16 NMSA 1978 shall apply to all sales by auction, other than those specifically excepted in this section, of gold, silver, plated ware, precious or semiprecious stones, watches, clocks and goods, wares and merchandise commonly classified as jewelry of any kind and nature. It shall not apply to:

(1) bona fide judicial sales; or

(2) bona fide sales upon foreclosure of a chattel mortgage landlord's lien or other lien or like interests.

B. Auction sales of jewelry by transferees upon judicial or bankruptcy sales shall be subject to all the provisions of Chapter 61, Article 16 NMSA 1978.

History: Laws 1941, ch. 45, § 2; 1941 Comp., § 51-1504; 1953 Comp., § 67-13-4; Laws 1993, ch. 59, § 1.

The 1993 amendment, effective July 1, 1993, inserted "auction sales exceptions" in the catchline; substituted "Chapter 61, Article 16 NMSA 1978" for "This act" at the beginning of Subsection A and for "hereof" at the end of Subsection B; inserted "in this section" in the

first sentence of Subsection A; and made minor stylistic changes.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 8, 46.

7A C.J.S. Auctions and Auctioneers §§ 3, 8.

61-16-5. Sales prohibited without license.

All sales of jewelry by auction within the scope of Chapter 61, Article 16 NMSA 1978 are forbidden unless a license issued pursuant to that article has been obtained and is in effect. No such sales whether licensed or not shall be held or be or remain open for business for a period of more than fifteen consecutive days exclusive of Sundays and legal holidays nor shall any license be granted for a sale of greater duration.

History: Laws 1941, ch. 45, § 3; 1941 Comp., § 51-1505; 1953 Comp., § 67-13-5; Laws 1993, ch. 59, § 2.

The 1993 amendment, effective July 1, 1993, substituted "Sales prohibited without license" for "Prohibition" in the catchline; deleted former subsection designations, so that former Subsections A and C become the first and second sentences of this section; substituted "Chapter 61, Article 16 NMSA 1978" and "that article" for "this Act" in the first sentence; and deleted former Subsection B, pertaining to limitations on the hours for sales.

ANNOTATIONS

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Res. J. 599 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 3, 4, 8, 9.

Unlicensed auctioneer's right to recover compensation, 30 A.L.R. 851, 42 A.L.R. 1226, 118 A.L.R. 646.

License restrictions and regulations, validity, 31 A.L.R. 304, 39 A.L.R. 773, 111 A.L.R. 473.

Discrimination against nonresident by license, 61 A.L.R. 346, 112 A.L.R. 63.

Validity, construction and effect of "Sunday closing" or "blue" laws - modern status, 10 A.L.R.4th 246.

7A C.J.S. Auctions and Auctioneers §§ 3, 4.

61-16-6. Licenses.

Licenses to conduct auction sales of jewelry within this act [61-16-3 to 61-16-17 NMSA 1978] in any municipality shall be secured upon application filed at least thirty days prior to the proposed auction sale in conformity with this act to the governing body of such municipality. Licenses to conduct such sales outside the boundaries of any incorporated municipality shall be secured upon application filed at least thirty (30) days prior to the proposed auction sale in conformity with this act to the board of county commissioners of the county wherein the sale is to be held. The municipal or county board, as the case may be, is hereinafter referred to as "the licensing authority."

History: Laws 1941, ch. 45, § 4; 1941 Comp., § 51-1506; 1953 Comp., § 67-13-6.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

Liability of auctioneer under doctrine of strict products liability, 83 A.L.R.4th 1188.

7A C.J.S. Auctions and Auctioneers § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 3 to 11.

61-16-7. Application for license.

Every application for a license hereunder shall be under oath and shall include at least the following:

A. the name, residence and business address and age of the applicant together with an account of the applicant's occupation for the five years preceding the application;

B. the name, residence and business address and age of any person who will participate in conducting the proposed auction sale together with an account of the occupation of such person or persons for the five years preceding the application;

C. a complete inventory of the merchandise to be sold at the proposed auction, assigning a number to each item describing it specifically and giving as to each at least the following information:

(1) in the case of watches and clocks: the movement number, case number and model number, if any; a statement as to whether the article is new or rebuilt; the correct number of jewels; the kind of case, and the quality of the case; whether solid, gold or silver, gold-filled and the quality of any plating; the approximate year of manufacture;

(2) in the case of diamonds, whether sold separately or as a part of other jewelry: the exact weight; the color and quality; the degree of fineness; and the degree of perfection;

(3) in the case of precious and semiprecious stones other than diamonds, whether sold separately or as a part of other jewelry: the exact weight, the degree of fineness; and whether the stone is mined, reconstructed, synthetic or imitation;

(4) in the case of metallic wares, except watches, and other jewelry: the fineness of the metal, whether solid, filled or plated; and the quality of the plating, if there be plating;

D. an oath to observe the laws of this state and of any subdivision thereof wherein the sale is to be held;

E. the address, hours and dates of the proposed sale, only one place of auction being permitted;

F. the proposed terms of all sales;

G. a statement whether or not any auction license issued to the applicant has been denied or revoked.

All applications together with accompanying documents shall be kept by the municipal or county clerk as the case may be and shall be open to public inspection at all reasonable hours.

History: Laws 1941, ch. 45, § 5; 1941 Comp., § 51-1507; 1953 Comp., § 67-13-7.

Persons eligible for license, 31 A.L.R. 304, 39 A.L.R. 773, 111 A.L.R. 473.

7A C.J.S. Auctions and Auctioneers § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers § 9.

61-16-8. Bond.

In addition, all such applications for license shall be accompanied by the bond of the applicant in the penal sum of five thousand dollars (\$5,000) running to the state of New Mexico, and conditioned to secure the faithful observance of this act [61-16-3 to 61-16-17 NMSA 1978] by all persons taking part in the conduct of any auction hereunder. Such bonds shall be secured by two or more individual sureties each of whom must be qualified by ownership of property subject to execution within this state over and above all just debts and liabilities of a value equal to the penal sum of the bond; or by one corporate surety qualified to do business in this state.

History: Laws 1941, ch. 45, § 6; 1941 Comp., § 51-1508; 1953 Comp., § 67-13-8.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 6, 7, 10.
7A C.J.S. Auctions and Auctioneers § 26.

61-16-9. Fees.

Except as provided in Section 61-1-34 NMSA 1978, all applications shall be accompanied by the payment in cash to the municipality or county of an amount equal to twenty-five dollars (\$25.00) for each day of the proposed sale as its duration is shown by the application. Such fees are to be returned to the applicant in the event the application is denied, or a pro rata share of the fees shall be returned if the sale is voluntarily discontinued before its proposed duration has expired. No return of any sums shall be made in the event the sale is terminated for any violation of Chapter 61, Article 16 NMSA 1978.

History: Laws 1941, ch. 45, § 7; 1941 Comp., § 51-1509; 1953 Comp., § 67-13-9; 1978 Comp., § 61-16-9; 2020, ch. 6, § 44.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military

service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978", and after "terminated for any violation", deleted "hereof" and added "of Chapter 61, Article 16 NMSA 1978".

61-16-10. Inspectors.

Said fees shall be used to defray the expense of employing a special inspector or inspectors who shall remain on the premises upon which the auction sale is conducted during all times when the same is open for business. The special inspectors shall be appointed specially for each auction by the licensing authority and so far as possible regularly employed police officers or deputy sheriffs shall be used for this purpose. He shall have power and be under duty to supervise the auction to ensure observance of the laws of this state and to make arrests in the same manner and to the same extent as other peace officers. Any surplus of fees over and above the cost of employing such special inspector or inspectors shall be retained by the municipality or county.

History: Laws 1941, ch. 45, § 8; 1941 Comp., § 51-1510; 1953 Comp., § 67-13-10.

61-16-11. Hearing.

Upon the presentation of an application for a license hereunder the municipal or county clerk as the case may be shall set a date for hearing thereon not less than one week nor more than three weeks thereafter, said hearing to be held at either a regular or special meeting of the licensing authority. Notice of said hearing shall be given forthwith by registered mail to each person or company engaged in the business of selling jewelry within the particular municipality or county.

At the hearing upon said application the applicant shall attend and shall submit to an examination touching his application under oath to be conducted by the municipal or district attorney as the case may be, and by any citizen of said municipality or county, and by the attorney for any jeweler or any association of jewelers doing business within this state. The applicant or any person, persons, corporations or associations opposing the granting of a license may introduce evidence either [by] written or oral testimony or by affidavit.

If the governing board of the county or municipality as the case may be shall determine that the applicant is not disqualified, and that the application conforms with the law a license shall be granted; otherwise a license shall not be granted. As a condition of granting the license the licensing board may require more complete descriptions of the items in the inventory if they deem the tendered descriptions to be incomplete.

History: Laws 1941, ch. 45, § 9; 1941 Comp., § 51-1511; 1953 Comp., § 67-13-11.

Bracketed material. — The bracketed word in the second paragraph was added by the compiler. It was not enacted by the legislature and is not part of the law.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers § 9.
53 C.J.S. Licenses § 43.

61-16-12. Licenses limited.

Licenses issued hereunder shall be expressly limited to the particular times and premises described in the application as required in Section 5(e) [61-16-7(E) NMSA 1978] hereof. A license issued hereunder shall not be held to sanction any auction sale of jewelry at any time or place other than that described in the application thereof.

History: Laws 1941, ch. 45, § 10; 1941 Comp., § 51-1512; 1953 Comp., § 67-13-12.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 3 to 11.
7A C.J.S. Auctions and Auctioneers § 4.

61-16-13. Persons disqualified.

No person shall be granted a license, if he or any of his agents, principals or employees:

- A. has been convicted of a violation of this act [61-16-3 to 61-16-17 NMSA 1978] or of Sections 61-16-1 and 61-16-2 NMSA 1978;
- B. has had a license issued under this act revoked;
- C. has held a jewelry auction sale within thirty (30) days prior to the date given in the application for the beginning of the sale sought to be licensed.

History: Laws 1941, ch. 45, § 11; 1941 Comp., § 51-1513; 1953 Comp., § 67-13-13.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers § 9.
7A C.J.S. Auctions and Auctioneers § 4.

61-16-14. Offenses.

It shall be unlawful:

- A. to employ shills or puffers at any such auction sale or to offer or to make or to procure to be offered or made any false bid or offer any false bid to buy or pretend to buy any article sold or offered for sale;
- B. to make or attempt to make any sale to any but a bona fide bidder for cash at the highest bid above the reserve price, if any, named in the inventory required by Sec. [Section] 5(c) [61-16-7C NMSA 1978] hereof;
- C. to misrepresent the cost price, or trade name or quality of any article offered for sale;
- D. to fail to announce in a clear audible tone as to each article offered for sale its true description as found in the inventory required by Section 5(c) hereof;
- E. to fail to attach to each article sold upon its delivery a card upon which shall be legibly written its inventory description and number;
- F. to make any false statement in the application for license hereunder or the inventory filed therewith;
- G. to sell or attempt to sell any article or merchandise falling within the class described in Section 2 [61-16-4 NMSA 1978] hereof that has not been included in the inventory required by Section 5(c) hereof;
- H. for a licensee to conduct or attempt to conduct an auction within this act [61-16-3 to 61-16-17 NMSA 1978] other than on the premises described in the application as required by Section 5(e) [61-16-7(E) NMSA 1978].

History: Laws 1941, ch. 45, § 12; 1941 Comp., § 51-1514; 1953 Comp., § 67-13-14.

Cross references. — For the penalty for employing puffers, see 61-16-1 and 61-16-2 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 13 to 36, 77, 86.

Title to goods, as between purchaser from, and one who entrusted them to, auctioneer, 36 A.L.R.2d 1362.

Implied or apparent authority of agent selling personal property to make warranties, 40 A.L.R.2d 285.

Liability of auctioneer under doctrine of strict products liability, 83 A.L.R.4th 1188.

7A C.J.S. Auctions and Auctioneers §§ 8 to 17, 27.

61-16-15. Penalties.

Any person or corporation violating the provisions of Section 3(a) [61-16-5(A) NMSA 1978] of this act shall upon conviction thereof be fined not less than one hundred [\$100] nor more than one thousand dollars [\$1,000] and may be imprisoned for not more than sixty (60) days.

Any person or corporation violating any other provisions of this act [61-16-3 to 61-16-17 NMSA 1978] shall upon conviction be fined not less than twenty-five [\$25.00] nor more than one hundred dollars [\$100] for each offense. Each individual illegal sale at said auction shall constitute a separate offense. Upon conviction of the licensee or his agent or principal or employee of any offense hereunder the license shall be revoked forthwith by the court in which the conviction is had.

History: Laws 1941, ch. 45, § 13; 1941 Comp., § 51-1515; 1953 Comp., § 67-13-15.

61-16-16. Suspension of license.

Upon the filing of criminal proceedings for violation of this act [61-16-3 to 61-16-17 NMSA 1978] against any licensee or any person operating the auction, any citizen may apply to the county or municipal board which granted the license for an immediate suspension of said license. The board shall determine forthwith whether there is probable cause to believe that this act has been violated and upon an affirmative determination shall forthwith suspend the operation of the license effective upon delivery of written notice thereof to any person conducting the auction sale or soliciting bids. The suspension shall operate until the acquittal of the person accused of such violation or until revocation of the license following conviction.

History: Laws 1941, ch. 45, § 14; 1941 Comp., § 51-1516; 1953 Comp., § 67-13-16.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

7A C.J.S. Auctions and Auctioneers § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 3 to 11.

61-16-17. Recovery on bond.

The state of New Mexico for the purpose of recovery of fines and penalties hereunder, and any person purchasing at any auction hereunder for the satisfaction of any civil judgment in an action for misrepresentation or fraud, or arising out of any violation of this act [61-16-3 to 61-16-17 NMSA 1978], shall have a right of action upon the bond required by Section 6 [61-16-8 NMSA 1978] hereof. Such action shall be brought in the name of the state of New Mexico only or in the name of the state of New Mexico to the use of the party entitled to recover upon said bond, as the case may be.

History: Laws 1941, ch. 45, § 15; 1941 Comp., § 51-1517; 1953 Comp., § 67-13-17.

Liability of auctioneer or clerk to buyer as to title, condition or quality of goods, 80 A.L.R.2d 1237.

7A C.J.S. Auctions and Auctioneers §§ 3, 26.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 6, 7, 10.

ARTICLE 17

Barbers (Repealed.)

(Repealed by Laws 1979, ch. 372, § 7; 1987, ch. 107, § 12; 1993, ch. 171, § 28.)

61-17-1 to 61-17-42. Repealed.

Repeals. — Laws 1993, ch. 171, § 28 repeals former 61-17-1 to 61-17-6 NMSA 1978, as enacted by Laws 1963, ch. 103, § 1, and as amended by Laws 1981, ch. 27, § 1, Laws 1987, ch. 107, §§ 1 to 3, and Laws 1988, ch. 38, § 1, concerning the licensing of barbers, the short title, definitions, regulation of barber schools, barber instructors, and barber qualifications, effective June 18, 1993. For provisions of the former sections, see 1987 Replacement Pamphlet and 1992 Cumulative Supplement. For present comparable provisions, see Chapter 61, Article 17A NMSA 1978.

Laws 1987, ch. 107, § 12 repeals former 61-17-7 NMSA 1978, as amended by Laws 1979, ch. 372, § 1, relating to apprentice qualifications, effective June 19, 1987. For the provisions of the former section, see 1981 Replacement Pamphlet.

Laws 1993, ch. 171, § 28, repeals former 61-17-8 NMSA 1978, as amended by Laws 1987, ch. 107, § 4, concerning reciprocity with other states, territories or possessions of the United States, or the District of Columbia, effective June 18, 1993. For provisions of the former section, see 1987 Replacement Pamphlet.

Laws 1987, ch. 107, § 12, repeals former 61-17-9 NMSA 1978 as enacted by Laws 1937, ch. 220, § 7, relating to registered apprentices from other states, effective June 19,

1987. For the provisions of the former section, see 1981 Replacement Pamphlet.

Laws 1993, ch. 171, § 28 repeals former 61-17-10 to 61-17-25 NMSA 1978, as enacted by Laws 1937, ch. 220, §§ 10, 12, and 15 to 17; and Laws 1979, ch. 372, § 3; and as amended by Laws 1977, ch. 247, § 175; Laws 1983, ch. 262, §§ 2, 3; and Laws 1987, ch. 107, §§ 5 to 11; concerning the issuance, display, renewal, suspension or revocation of a certificate of registration, creating, organizing, and empowering the board of barber examiners, and providing laws concerning sanitation, effective June 18, 1993. For provisions of the former sections, see 1987 Replacement Pamphlet. For present comparable provisions, see Chapter 61, Article 17A NMSA 1978.

Laws 1979, ch. 372, § 7, repeals former 61-17-26 to 61-17-39 NMSA 1978, relating to unfair, unjust and uneconomic trading practices in the operation of barber shops in the state and the prohibition thereof.

Laws 1993, ch. 171, § 28 repeals former 61-17-40 to 61-17-42 NMSA 1978, as enacted by Laws 1974, ch. 78, § 21; and Laws 1983, ch. 262, § 5; and as amended by Laws 1987, ch. 333, § 9; concerning application of the Criminal Offender Employment Act, 28-2-1 to 28-2-6 NMSA 1978, providing for the delayed repeal of this article, and construing this article, effective June 18, 1993. For provisions of the former sections, see 1987 Replacement Pamphlet.

ARTICLE 17A

Barbers and Cosmetologists

Sec.

- 61-17A-1. Short title. (Repealed effective July 1, 2026.)
- 61-17A-2. Definitions. (Repealed effective July 1, 2026.)
- 61-17A-3. Barbering defined. (Repealed effective July 1, 2026.)
- 61-17A-4. Cosmetology defined. (Repealed effective July 1, 2026.)
- 61-17A-4.1. Hairstyling defined. (Repealed effective July 1, 2026.)
- 61-17A-5. License required. (Repealed effective July 1, 2026.)
- 61-17A-6. Board created; membership. (Repealed effective July 1, 2026.)
- 61-17A-7. Board and department powers and duties. (Repealed effective July 1, 2026.)
- 61-17A-8. Licensure requirements; barbers. (Repealed effective July 1, 2026.)
- 61-17A-8.1. Licensure requirements; hairstylists. (Repealed effective July 1, 2026.)
- 61-17A-9. Licensure requirements; cosmetologists. (Repealed effective July 1, 2026.)
- 61-17A-10. Licensure requirements of manicurists-pedicurists, estheticians and electrologists. (Repealed effective July 1, 2026.)
- 61-17A-11. Licensure of instructors. (Repealed effective July 1, 2026.)
- 61-17A-12. Licensure of schools. (Repealed effective July 1, 2026.)

Sec.

- 61-17A-13. Repealed.
- 61-17A-14. Barbers and cosmetologists fund created. (Repealed effective July 1, 2026.)
- 61-17A-15. Licensure of all establishments and enterprises. (Repealed effective July 1, 2026.)
- 61-17A-16. Fees. (Repealed effective July 1, 2026.)
- 61-17A-17. Licensure under prior law; expedited licensure. (Repealed effective July 1, 2026.)
- 61-17A-18. License to be displayed; notice of change of place of business. (Repealed effective July 1, 2026.)
- 61-17A-19. License nontransferable. (Repealed effective July 1, 2026.)
- 61-17A-20. Duration, restoration and renewal of licenses. (Repealed effective July 1, 2026.)
- 61-17A-21. Grounds for refusal to issue, renew, suspend or revoke a license. (Repealed effective July 1, 2026.)
- 61-17A-22. Exemptions. (Repealed effective July 1, 2026.)
- 61-17A-23. Penalties. (Repealed effective July 1, 2026.)
- 61-17A-24. Criminal offender's character evaluation. (Repealed effective July 1, 2026.)
- 61-17A-25. Termination of agency life; delayed repeal. (Repealed effective July 1, 2026.)

61-17A-1. Short title. (Repealed effective July 1, 2026.)

Chapter 61, Article 17A NMSA 1978 may be cited as the "Barbers and Cosmetologists Act".

History: Laws 1993, ch. 171, § 1; 2013, ch. 166, § 3.

The 2013 amendment, effective June 14, 2013, added the NMSA chapter and article for the Barbers and Cosmetologists Act; and at the beginning of the sentence, deleted "Sections 1 through 24 of this act" and added "Chapter 61, Article 13 NMSA 1978".

ANNOTATIONS

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Res. J. 599 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists §§ 4 to 12.

Places or persons within purview of statute or ordinance as to licensing of barbers, 31 A.L.R. 433, 59 A.L.R. 543.

Validity, construction, and effect of statute or ordinance regulating beauty culture schools, 56 A.L.R.2d 879.

39A C.J.S. Health and Environment §§ 37 to 39.

61-17A-2. Definitions. (Repealed effective July 1, 2026.)

As used in the Barbers and Cosmetologists Act:

- A. "barber" means a person, other than a student, who for compensation engages in barbering;
- B. "board" means the board of barbers and cosmetologists;
- C. "cosmetologist" means a person, other than a student, who for compensation engages in cosmetology;
- D. "department" means the regulation and licensing department;
- E. "electrologist" means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;
- F. "enterprise" means a business venture, firm or organization;
- G. "establishment" means an immobile beauty shop, barber shop, electrology clinic, salon or similar place of business in which cosmetology, barbering, eyebrow threading, hairstyling or electrolysis is performed;
- H. "esthetician" means a person, other than a student, who for compensation:
 - (1) uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams, for the purpose of preserving the health and beauty of the skin and body;
 - (2) massages, cleans, stimulates or manipulates the skin for the purpose of preserving the health and beauty of the skin and body; or
 - (3) performs activities similar to the activities described in Paragraph (1) or (2) of this subsection on any part of the body of a person;
- I. "eyebrow threading" means a method of hair removal in which a thin thread is doubled, twisted and then rolled over areas of unwanted hair, plucking the hair at the follicle level;
- J. "hairstylist" means a person, other than a student, who for compensation engages in hairstyling;
- K. "manicurist-pedicurist" means a person, other than a student, who for compensation performs work on the nails of a person and applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;
- L. "sanitation" means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;
- M. "school" means a public or private instructional facility approved by the board that teaches cosmetology, barbering or hairstyling; and
- N. "student" means a person enrolled in a school to learn or be trained in cosmetology, barbering, hairstyling or electrolysis.

History: Laws 1993, ch. 171, § 2; 1997, ch. 218, § 1; 2017, ch. 108, § 1; 2017, ch. 112, § 3; 2022, ch. 39, § 69.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, provided that "department" means the regulation and

licensing department, as used in the Barbers and Cosmetologists Act; and added a new Subsection D and redesignated former Subsections D through M as Subsections E through N, respectively.

2017 Multiple Amendments. — Laws 2017, ch. 108, § 1 and Laws 2017, ch. 112, § 3, both effective June 16, 2017,

enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2017, ch. 112, § 3, as the last act signed by the governor is set out above and incorporates both amendments.

The nature of the difference between the amendments is that Laws 2017, ch. 108, § 1, defined "eyebrow threading" and revised the definition of "establishment" to include "eyebrow threading" as used in the Barbers and Cosmetologists Act, and Laws 2017, ch. 112, § 3, defined "hairstylist" and revised the definitions of certain terms as used in the Barbers and Cosmetologists Act.

Laws 2017, ch. 112, § 3, effective June 16, 2017, defined "hairstylist" and revised the definitions of certain terms as used in the Barbers and Cosmetologists Act; in Subsection F, after "barbering", added "hairstyling"; added new Subsection H and redesignated the succeeding subsections accordingly; in Subsection K, after "cosmetology", deleted "or", and after "barbering", added

"or hairstyling"; and in Subsection L, after "barbering", added "hairstyling".

Laws 2017, ch. 108, § 1, effective June 16, 2017, defined "eyebrow threading" and revised the definition of "establishment" to include "eyebrow threading" as used in the Barbers and Cosmetologists Act; in Subsection F, after "barbering", added ", eyebrow threading"; and added new Subsection H and redesignated the succeeding subsections accordingly.

The 1997 amendment added Subsections E, I and K and redesignated former Subsections E to H accordingly, inserted "other than a student" near the beginning of Subsections D and H, rewrote Subsection G, and made minor stylistic changes throughout the section. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

61-17A-3. Barbering defined. (Repealed effective July 1, 2026.)

Barbering includes any one or any combination of the following practices when done upon the upper part of the human body for cosmetic purposes for the public generally, upon male or female:

- A. shaving or trimming the beard or cutting the hair;
- B. curling and waving, including permanent waving, the hair;
- C. giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances;
- D. shampooing, bleaching or dyeing the hair or applying tonics; or
- E. applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body.

History: Laws 1993, ch. 171, § 3.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

61-17A-4. Cosmetology defined. (Repealed effective July 1, 2026.)

Cosmetology means the practice of those services that include:

- A. arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, straightening or similar work upon the hair of a person, whether by hand or through the use of chemistry or of mechanical or electrical apparatus or appliances;
- B. using cosmetic preparations, antiseptics, tonics, lotions or creams or massaging, cleansing, stimulating, manipulating, beautifying or performing similar work on the body of a person;
- C. manicuring and pedicuring the nails of a person;
- D. caring for and servicing wigs and hair pieces; or
- E. removing of unwanted hair except by means of electrolysis.

History: Laws 1993, ch. 171, § 4.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

61-17A-4.1. Hairstyling defined. (Repealed effective July 1, 2026.)

Hairstyling includes any one or any combination of the following practices when done upon the upper part of the male or female human body for cosmetic purposes for the public generally, using the hands or manual, mechanical or electrical implements or appliances:

- A. cleansing, massaging or stimulating the scalp with oils, creams, lotions or other cosmetic or chemical preparations;
- B. applying cosmetic or chemical preparations, antiseptics, powders, oils, clays or lotions to the scalp;

- C. cutting, arranging, applying hair extensions to or styling the hair by any means;
- D. cleansing, coloring, lightening, waving or straightening the hair with cosmetic or chemical preparations; or
- E. trimming a person's beard.

History: Laws 2017, ch. 112, § 1.

Delayed repeals. — For the delayed repeal of this section, see 61-17A-25 NMSA 1978.

Effective dates. — Laws 2017, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

61-17A-5. License required. (Repealed effective July 1, 2026.)

- A. Unless licensed pursuant to the Barbers and Cosmetologists Act or exempted from the provisions of that act, no person shall practice barbering, hairstyling or cosmetology for compensation either directly or indirectly.
- B. Unless licensed pursuant to the Barbers and Cosmetologists Act, no person shall operate a school or establishment for compensation.
- C. Unless licensed pursuant to the Barbers and Cosmetologists Act or exempted from the provisions of that act, no person shall teach barbering, hairstyling, cosmetology or electrology for compensation.
- D. Unless licensed by the board pursuant to the Barbers and Cosmetologists Act, no person shall practice as a manicurist-pedicurist, esthetician or electrologist for compensation.

History: Laws 1993, ch. 171, § 5; 1997, ch. 218, § 2; 2017, ch. 112, § 4.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2017 amendment, effective June 16, 2017, required individuals who engage in the practice of hairstyling or who teach hairstyling to obtain a license pursuant to the Barbers and Cosmetologists Act; and in Subsections A and C, after "barbering", added "hairstyling".

The 1997 amendment substituted "License required" for "Certification required" in the section heading and substituted "Unless licensed" for "Unless certified" at the beginning of Subsection D. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment

of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ANNOTATIONS

Inapplicable in federal enclave. — The state of New Mexico may not require that barbers employed at White Sands missile range by a concessionaire under contract with the army and air force exchange service be subject to licensing and other regulation under the laws of New Mexico as administered by the state board of barber examiners. 1959-60 Op. Att'y Gen. No. 60-15 (rendered under former law).

Inspection prerequisite to reopening. — The opening of a barber shop after it was closed for some years constitutes the opening or establishment of such shop for which the inspection fee is payable. 1937-38 Op. Att'y Gen. No. 38-1974 (rendered under former law).

61-17A-6. Board created; membership. (Repealed effective July 1, 2026.)

- A. The "board of barbers and cosmetologists" is created. The board is administratively attached to the regulation and licensing department. The board consists of seven members appointed by the governor. Members shall serve three-year terms; provided that at the time of initial appointment, the governor shall appoint members to abbreviated terms to allow staggering of subsequent appointments. Vacancies shall be filled in the manner of the original appointment.
- B. Of the seven members of the board, five shall be licensed pursuant to the Barbers and Cosmetologists Act and shall have at least five years' practical experience in their respective occupations. Of those five, one member shall be a licensed barber, one member shall be a licensed hairstylist, two members shall be licensed cosmetologists and one member shall represent school owners. The remaining two members shall be public members. Neither the public members nor their spouses shall have ever been licensed pursuant to the provisions of the Barbers and Cosmetologists Act or similar prior legislation or have a financial interest in a school or establishment.

C. Members of the board shall be reimbursed pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

D. The board shall elect from among its members a chair and such other officers as it deems necessary. The board shall meet at the call of the chair, not less than four times each year. A majority of members currently serving shall constitute a quorum for the conduct of business.

E. No board member shall serve more than two full consecutive terms and any member who fails to attend, after proper notice, three meetings shall automatically be recommended for removal unless excused for reasons set forth by board rule.

History: Laws 1993, ch. 171, § 6; 1997, ch. 218, § 3; 2007, ch. 181, § 15; 2015, ch. 129, § 1; 2017, ch. 112, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-17A-25 NMSA 1978.

The 2017 amendment, effective June 16, 2017, revised the composition of the board of barbers and cosmetologists, requiring one member to be a licensed hairstylist and reducing the number of members who must be licensed barbers; in Subsection B, after "Of those five," deleted "two members" and added "one member", after "shall be", added "a", and after the second occurrence of "licensed", deleted "barbers" and added "barber, one member shall be a licensed hairstylist".

The 2015 amendment, effective July 1, 2015, reduced the number of board members and changed the composition of the board of barbers and cosmetologists; in Subsection A, in the first sentence, after "The board", deleted "shall be" and added "is", and in the third sentence, after "The board", deleted "shall consist" and added "consists", and after "of", deleted "nine" and added "seven"; in Subsection B, after "Of the", deleted "nine" and added "seven", after "represent school owners," deleted "Two members shall be licensed body artists pursuant to the Body Art Safe Practices Act and shall have at least five years in practice in their occupation.", and after "Cosmetologists Act", deleted "the Body Art Safe Practices Act"; and in Subsection E, after "set forth by board", deleted "regulation" and added "rule".

Temporary provisions. — Laws 2015, ch. 129, § 10 provided:

A. On July 1, 2015:

(1) all personnel and all money, appropriations, records, furniture, equipment, supplies and other property that belonged or were allocated to the board of barbers and cosmetologists for use in connection with the implementation of the Body Art Safe Practices Act are transferred to the board of body art practitioners;

(2) all money that is in the barbers and cosmetologists fund that was paid into the fund pursuant to the Body Art Safe Practices Act or regulations promulgated pursuant to that act shall be transferred to the body art practitioners fund;

(3) all existing contracts, agreements and other obligations that relate to the Body Art Safe Practices Act or the board of barbers and cosmetologists work pursuant to that act shall be binding on the board of body art practitioners;

(4) all pending court cases, legal actions, appeals and other legal proceedings and all pending administrative proceedings that involve the board of barbers and cosmetologists that relate solely to the implementation of the Body Art Safe Practices Act shall be unaffected and shall continue in the name of the board of body art practitioners. Pending legal or administrative proceedings described in this paragraph that relate to the board of barbers and cosmetologists and to the implementation of the Body Art Safe Practices Act shall be unaffected, but the board of body art practitioners shall be joined as a party;

(5) all rules, orders and other official acts of the board of barbers and cosmetologists pursuant to the Body Art Safe Practices Act shall continue in effect until amended, replaced or repealed by the board of body art practitioners; and

(6) references in the law, rules and orders to the board of barbers and cosmetologists in connection with the Body Art Safe Practices Act shall be deemed references to the board of body art practitioners.

B. Licenses that were issued before the effective date of this act by the board of barbers and cosmetologists pursuant to the Body Art Safe Practices Act shall remain in effect until the license expires or is renewed or reissued by the board of body art practitioners.

The 2007 amendment, effective June 15, 2007, provides that two members of the board shall be licensed body artists who shall have at least five years in practice in their occupation.

The 1997 amendment deleted "or certified" following "shall have ever been licensed" in the last sentence of Subsection B. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ANNOTATIONS

Removal without hearing. — Members of the former state board of barber examiners were policy-making persons, having no property interest in their positions; they were not statutorily, nor constitutionally, entitled to hearings before removal from their positions. *State ex rel. Duran v. Anaya*, 1985-NMSC-044, 102 N.M. 609, 698 P.2d 882 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 9.

61-17A-7. Board and department powers and duties. (Repealed effective July 1, 2026.)

A. The board shall:

(1) adopt and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules necessary to carry out the provisions of the Barbers and Cosmetologists Act;

(2) establish fees;

- (3) provide for the examination, licensure and license renewal of applicants for licensure;
- (4) establish standards for and provide for the examination, licensure and license renewal of manicurists-pedicurists, estheticians and electrologists;
- (5) keep a record of its proceedings and a register of applicants for licensure;
- (6) provide for the licensure of barbers, hairstylists, cosmetologists, manicurists-pedicurists, estheticians, electrologists, instructors, schools, enterprises and establishments;
- (7) establish administrative penalties and fines;
- (8) create and establish standards and fees for special licenses;
- (9) establish guidelines for schools to calculate tuition refunds for withdrawing students; and
- (10) issue cease and desist orders to persons violating the provisions of the Barbers and Cosmetologists Act and rules promulgated in accordance with that act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

B. The board may establish continuing education requirements as requirements for licensure.

C. A member of the board, its employees or agents may enter and inspect a school, enterprise or establishment at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act.

D. The department shall:

- (1) process and issue licenses to applicants who meet the requirements of the Barbers and Cosmetologists Act and board rules;
- (2) investigate persons engaging in practices that may violate the provisions of the Barbers and Cosmetologists Act and report results of investigations to the board;
- (3) approve the selection of and supervise primary staff assigned to the board;
- (4) carry out the operations of the board to include budgetary expenditures;
- (5) maintain records, including financial records; and
- (6) keep a licensee record in which the names, addresses and license numbers of all licensees shall be recorded together with a record of all license renewals, suspensions and revocations.

History: Laws 1993, ch. 171, § 7; 1997, ch. 218, § 4; 2003, ch. 408, § 23; 2007, ch. 181, § 16; 2013, ch. 162, § 1; 2015, ch. 129, § 2; 2017, ch. 112, § 6; 2022, ch. 39, § 70.

Delayed repeals. — For delayed repeal of this section, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, expanded the powers and duties of the regulation and licensing department, and clarified that the board of barbers and cosmetologists is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; in the section heading, added "and department"; in Subsection A, deleted Paragraphs A(5) and A(6) and redesignated former Paragraphs A(7) through A(12) as Paragraphs A(5) through A(10), respectively, in Paragraph A(10), after "in accordance with that act", added "in accordance with the Uniform Licensing Act"; and added Subsection D.

The 2017 amendment, effective June 16, 2017, required the board of barbers and cosmetologists to provide for the licensure of hairstylists; in Subsection A, Paragraph A(8), after "licensure of barbers", added "hairstylists".

The 2015 amendment, effective July 1, 2015, removed the board of barbers and cosmetologists' oversight authority over the Body Art Safe Practices Act; in Paragraph (1) of Subsection A, after "Cosmetologists Act", deleted "and the Body Art Safe Practices Act"; in Paragraph (4) of Subsection A, after "estheticians", added "and", and after "electrologists", deleted "and body artists and operators pursuant to the Body Art Safe Practices Act"; in Paragraph (8) of Subsection A, after "estheticians", deleted "body artists and operators pursuant to the Body Art Safe

Practices Act"; in Paragraph (11) of Subsection A, after "students", added "and"; deleted Paragraph (12) of Subsection A, relating to the hiring staff to administer the provisions of the Body Art Safe Practices Act, and redesignated former Paragraph (13) of Subsection A as Paragraph (12) of Subsection A; in Paragraph (12) of Subsection A, after "Cosmetologists Act", deleted "or the Body Art Safe Practices Act", and after "in accordance with", deleted "those acts" and added "that act"; in Subsection C, after "Cosmetologists Act", deleted "and the Body Art Safe Practices Act".

The 2013 amendment, effective June 14, 2013, added the power to issue cease and desist orders; and added Paragraph (13) of Subsection A.

The 2007 amendment, effective June 15, 2007, requires the board to adopt rules to carry out the Body Art Safe Practices Act and establish standards and provide examination and licensure for body artists and operators pursuant to the Body Art Safe Practices Act and adds Paragraph (12) of Subsection A.

Appropriations. — Laws 2007, ch. 181, § 18, effective June 15, 2007, appropriates \$300,000 from the barbers and cosmetology fund to the board of barbers and cosmetologists for expenditure in fiscal year 2008 for administration of the Body Safe Practices Act.

The 2003 amendment, effective July 1, 2003, deleted "and regulations" following "State Rules Act, rules" near the middle of Paragraph A(1); deleted "and regulations" following "copies of rules" near the beginning of Paragraph A(6); and deleted former Paragraph A(11), concerning hire of director and staff, and redesignated former Paragraph A(12) as present Paragraph A(11).

The 1997 amendment, in Subsection A, substituted "licensure and license renewal" for "certification and renewal of certification" in Paragraph (4), inserted "enterprise" in Paragraph (6), deleted "certification or" preceding "licensure" in Paragraph (7), rewrote Paragraph (8), inserted "and fees" in Paragraph (10), added Paragraph (12) and made minor stylistic changes at the end of Subsections (10) and (11) accordingly; and, in Subsection C, inserted "enterprise". Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ANNOTATIONS

Board deemed state officers for venue purposes. — The former board of barber examiners was clothed by the legislature with powers and duties of statewide scope, the exercise of which involved some portion of the governmental power. Hence the board itself, as well as its component members, was a state officer for venue purposes. *Tudesque v. N.M. State Bd. of Barber Examiners*, 1958-NMSC-128, 65 N.M. 42, 331 P.2d 1104.

Fee not waivable. — A barber shop had to pay the establishment license fee in order to be a valid operation and the state board had no authority to waive the

requirement that a shop pay the fee. 1951-52 Op. Att'y Gen. No. 51-5407 (rendered under former law).

Inspection fee not chargeable for relocation. — Inspection fee provision applied only to barber shops which were opening for business for the first time. It did not apply where mere location of shop was changed. 1937-38 Op. Att'y Gen. No. 37-1709 (rendered under former law).

Inspection fee chargeable for reopening. — The opening of a barber shop after it was closed for some years constituted the opening or establishment of such shop for which the inspection fee was payable under former Section 61-17-13 NMSA 1978. 1937-38 Op. Att'y Gen. No. 38-1974 (rendered under former law).

No fee chargeable for certificate transfer. — The board could pass a rule requiring a transfer of the annual establishment license mentioned in former Section 61-17-13 NMSA 1978 in the books of the board, or by an exchange of the certificate transferred for a new certificate issued in lieu of the old one and in the name of the vendee, but it could not make any charge for this transfer or exchange of license certificates, since former Section 61-17-13 NMSA 1978 did not authorize such a charge and the board could not, by rule, require the payment of charges not authorized by this section. 1939-40 Op. Att'y Gen. No. 39-3233 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 9 et seq.

61-17A-8. Licensure requirements; barbers. (Repealed effective July 1, 2026.)

A. Except as provided in Subsection B of this section, a barber license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

- (1) is at least seventeen years of age;
- (2) has completed a course in barbering of at least one thousand two hundred hours or equivalent credits in a school or apprenticeship approved by the board; and
- (3) has passed an examination approved by the board.

B. A barbering license shall be issued to a person who files a completed application, accompanied by the required fees and documentation, meets the requirements of Paragraphs (1) through (3) of Subsection A of this section and shows proof of having successfully completed a registered barbering apprenticeship approved by the state apprenticeship agency and the board of barbers and cosmetologists.

C. The holder of a barber license has the right and privilege to use the title "barber", and the initials "R.B." following the holder's surname and to use a barber pole, the traditional striped, vertical emblem of the barbering trade.

History: Laws 1993, ch. 171, § 8; 1997, ch. 218, § 5; 2015, ch. 85, § 1; 2022, ch. 39, § 71.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised the licensure requirements for barbers; in Subsection A, deleted former Paragraph A(1), which provided "has an education equivalent to the completion of the second year of high school", and redesignated former Paragraphs A(2) through A(4) as Paragraphs A(1) through A(3), respectively, and in Paragraph A(2), after "two hundred hours", added "or equivalent credits"; and in Subsection B, after "Paragraphs (1) through", changed "(4)" to "(3)".

The 2015 amendment, effective June 19, 2015, authorized the issuance of a barber license for any person who shows proof of having completed an approved registered

barbering apprenticeship; in the introductory sentence of Subsection A, added "Except as provided in Subsection B of this section"; in Subsection A, Paragraph (3), after "school", added "or apprenticeship"; added Subsection B and redesignated the succeeding subsection accordingly; and in Subsection C, after "barber", added "and".

The 1997 amendment deleted "submits satisfactory evidence that he" at the end of Subsection A, substituted "one thousand two hundred hours" for "twelve hundred hours" in Paragraph A(3), and inserted ", the initials 'R.B.' following the holder's surname" in Subsection B. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ANNOTATIONS

Paroled felon not barred from applying. — A convicted felon, while on parole, is under no disqualification that would prevent him from applying for a license to practice barbering or any other trade, profession or

occupation in this state. 1957-58 Op. Att'y Gen. No. 58-214 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologist §§ 11, 12.

61-17A-8.1. Licensure requirements; hairstylists. (Repealed effective July 1, 2026.)

A. Except as provided in Subsection B of this section, a hairstylist license shall be issued to a person who files a completed application, accompanied by the required fees and documentation, and who:

- (1) is at least seventeen years of age;
- (2) has completed a course in hairstyling of at least one thousand two hundred hours in a school approved by the board; and
- (3) has passed an examination approved by the board.

B. A hairstylist license shall be issued to a person who files a completed application, accompanied by the required fees and documentation, and meets the requirements of Paragraphs (1) through (3) of Subsection A of this section.

C. The holder of a hairstylist license has the right and privilege to use the title "hairstylist".

History: Laws 2017, ch. 112, § 2; 2022, ch. 39, § 72.

Delayed repeals. — For the delayed repeal of this section, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised the licensure requirements for hairstylists; in Subsection A, deleted former Paragraph A(1), which provided "has an education equivalent to the completion of the second year

of high school", and redesignated former Paragraphs A(2) through A(4) as Paragraphs A(1) through A(3), respectively, and in Paragraph A(2), after "two hundred hours in a school", added "approved by the board"; and in Subsection B, after "Paragraphs (1) through", changed "(4)" to "(3)".

61-17A-9. Licensure requirements; cosmetologists. (Repealed effective July 1, 2026.)

A. A cosmetologist license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

- (1) is at least seventeen years of age;
- (2) has completed a course in cosmetology of at least one thousand six hundred hours at a school approved by the board; and
- (3) has passed an examination approved by the board.

B. The name of a licensed cosmetologist may be immediately followed by the initials "R.C.", as a right and privilege of licensure.

History: Laws 1993, ch. 171, § 9; 1997, ch. 218, § 6; 2022, ch. 39, § 73.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised the licensure requirements for cosmetologists; and in Subsection A, deleted former Paragraph A(2), which provided "has an education equivalent to the completion of the second year of high school", and redesignated former Paragraphs A(3) and A(4) as Paragraphs A(2) and A(3), respectively.

The 1997 amendment deleted "submits satisfactory evidence that he" at the end of the introductory language

of Subsection A, substituted "one thousand six hundred hours" for "sixteen hundred hours" in Paragraph A(3), and rewrote Subsection B. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Products liability: perfumes, colognes, or deodorants, 46 A.L.R.4th 1197.

61-17A-10. Licensure requirements of manicurists-pedicurists, estheticians and electrologists. (Repealed effective July 1, 2026.)

A. The board shall provide for the licensure of manicurists-pedicurists. The board shall issue a manicurist-pedicurist license to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed manicurist-pedicurist may be immediately followed by the initials "R.M.", as a right and privilege of licensure.

B. The board shall provide for the licensure of estheticians. The board shall issue an esthetician license to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed esthetician may be immediately followed by the initials "R.F.", as a right and privilege of licensure.

C. The board shall provide for the licensure of electrologists. The board shall issue an electrologist license to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed electrologist may be immediately followed by the initials "R.E.", as a right and privilege of licensure.

History: Laws 1993, ch. 171, § 10; 1997, ch. 218, § 7.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 1997 amendment substituted "Licensure requirements" for "Certification" in the section heading, substituted "licensure" for "certification" and "license" for "certificate" throughout the section, rewrote the last

sentences of Subsections A, B and C, and made gender neutral changes throughout the section. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

61-17A-11. Licensure of instructors. (Repealed effective July 1, 2026.)

A. A cosmetologist instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

- (1) is a licensed cosmetologist;
- (2) has met all requirements established by the board; and
- (3) has passed an examination approved by the board.

B. A barber instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

- (1) is a licensed barber;
- (2) has completed at least a four-year high school course of study or its equivalent as approved by the board;
- (3) has met all requirements established by the board; and
- (4) has passed an examination approved by the board.

C. An electrologist instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board.

D. The name of a licensed instructor may be immediately followed by the initials "R.I.", as a right and privilege of licensure.

History: Laws 1993, ch. 171, § 11; 1997, ch. 218, § 8; 2022, ch. 39, § 74.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised the licensure requirements for cosmetologist instructors; and in Subsection A, deleted former Paragraph A(2), which provided "has completed at least a four year high

school course of study or its equivalent as approved by the board", and redesignated former Paragraphs A(3) and A(4) as Paragraphs A(2) and A(3), respectively.

The 1997 amendment deleted "submits satisfactory evidence that he" at the end of the introductory paragraphs of Subsections A and B, substituted "of compliance" for "that he complies" near the end of Subsection C, and rewrote Subsection D. Laws 1997, ch. 218 contains

no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ANNOTATIONS

College teaching credit not required. — The New Mexico state barbers board (now board of barbers and

cosmetologists) could not require that instructors in barbers colleges in New Mexico have 10 hours teaching credit in or at an accredited college or university. 1957-58 Op. Att'y Gen. No. 57-245 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 8.

61-17A-12. Licensure of schools. (Repealed effective July 1, 2026.)

A. The board shall provide for the licensure of barber schools. The board shall issue a barber school license to any barber school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

B. The board shall provide for the licensure of cosmetology schools. The board shall issue a cosmetology school license to any cosmetology school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

C. The board shall provide for the licensure of electrology schools. The board shall issue an electrology school license to any electrology school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

D. The board shall provide for the licensure of specialty schools. The board shall issue a specialty school license to any specialty school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

E. The board shall establish crossover credit standards for training available at either barber schools or cosmetology schools that may be used in meeting licensure requirements in either profession.

F. The board shall establish a corporate surety bond requirement for schools to indemnify students for fees and tuition paid to a school if the school ceases operation or terminates a program prior to the completion of a student's contract with the school.

History: Laws 1993, ch. 171, § 12; 1997, ch. 218, § 9.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 1997 amendment rewrote Subsection F. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ANNOTATIONS

No upper limit on required hours. — The language of former Section 61-17-4 NMSA 1978 clearly stated the minimum number of hours necessary for graduation and placed no maximum hours upon the course of study. 1957-58 Op. Att'y Gen. No. 57-153 (rendered under former law).

Students not required to charge fees. — Former Section 61-17-4 NMSA 1978 was silent as to fees to

be charged by student barbers, if any. The legislature could authorize a minimum fee to be charged for services performed by student barbers, but in lieu of such specific statutory authorization, student barbers, attending barber school, could refuse to accept or collect any charge for barbering services rendered to the public. 1957-58 Op. Att'y Gen. No. 57-153 (rendered under former law).

College teaching credit not required. — Under former Section 61-17-4 NMSA 1978, the New Mexico state barbers board could not require that instructors in barbers colleges in New Mexico have 10 hours teaching credit in or at an accredited college or university. 1957-58 Op. Att'y Gen. No. 57-245 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 8.

Liability of cosmetology school for injury to patron, 81 A.L.R.4th 444.

61-17A-13. Repealed.

Repeals. — Laws 1997, ch. 218, § 18 repeals 61-17A-13, as enacted by Laws 1993, ch. 171, § 13, relating to the tuition recovery fund. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23,

is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table. For provisions of former section, see 1993 Replacement Pamphlet.

61-17A-14. Barbers and cosmetologists fund created. (Repealed effective July 1, 2026.)

The "barbers and cosmetologists fund" is created in the state treasury. All license fees and charges imposed by the board shall be deposited in the fund. Money in the fund is appropriated to the board for the purpose of carrying out the provisions of the Barbers and Cosmetologists Act. Any balance remaining in the fund at the end of each fiscal year shall not revert to the general fund.

History: Laws 1993, ch. 171, § 14; 2022, ch. 39, § 75.
Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, eliminated the depositing of fines in the barbers and cosmetologists fund; and after "fees", added "and", and after "charges", deleted "and fines".

61-17A-15. Licensure of all establishments and enterprises. (Repealed effective July 1, 2026.)

The board shall provide for the licensure of all establishments and enterprises. The board shall issue a license to establishments, enterprises and clinics that submit a completed application, accompanied by the required fees and documentation, and that submit satisfactory evidence of compliance with all requirements established by the board.

History: Laws 1993, ch. 171, § 15; 1997, ch. 218, § 10.
Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 1997 amendment added "and enterprises" at the end of the section heading and at the end of the first sentence, and inserted "enterprises" near the beginning of the

second sentence. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

61-17A-16. Fees. (Repealed effective July 1, 2026.)

Except as provided in Section 61-1-34 NMSA 1978, the board may, by rule, establish initial license and renewal fees not to exceed the following:

establishment license	\$200
school license	\$600
relocation of a school	\$300
cosmetologist license	\$100
barber license.....	\$100
hairstylist license	\$100
specialty license	\$100
instructor license.....	\$100
duplicate license	\$50.00
temporary license	\$25.00
administrative fee	\$100
limited license fee	\$100
licensure through reciprocity.....	\$200
transcript	\$50.00
examinations	\$100.

History: Laws 1993, ch. 171, § 16; 1997, ch. 218, § 11; 2017, ch. 112, § 7; 2019, ch. 243, § 1; 2020, ch. 6, § 45.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

The 2019 amendment, effective July 1, 2019, increased the maximum fee that may be imposed by the board for certain professional and occupational licenses; after "cosmetologist license", deleted "50.00" and added "100", after "barber license", deleted "50.00" and added "100", after "hairstylist license", deleted "50.00" and

added "100", after "specialty license", deleted "50.00" and added "100", and after "instructor license", deleted "50.00" and added "100".

The 2017 amendment, effective June 16, 2017, provided the fee for a hairstylist license; after "barber license ... \$ 50.00", added "hairstylist license ... \$ 50.00".

The 1997 amendment, in the table of fees, substituted "specialty license" for "specialty certificate", and increased various fees throughout. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

61-17A-17. Licensure under prior law; expedited licensure. (Repealed effective July 1, 2026.)

A. A person licensed as a barber, a cosmetologist, an esthetician, an electrologist, an instructor of cosmetology or barbering or an instructor of electrology, a manicurist-pedicurist or a person holding an establishment license, clinic license or school owner's license under prior laws of this state, which license is valid on June 18, 1993, shall be held to be licensed under the provisions of the Barbers and Cosmetologists Act and shall be entitled to the renewal of the person's license as provided in that act.

B. The board shall grant a license pursuant to the provisions of the Barbers and Cosmetologists Act without an examination, upon payment of the required fee; provided that the applicant holds a valid, unrestricted license from another licensing jurisdiction.

C. No later than thirty days after a person files an application for licensure, the board shall process the application and issue an expedited license in accordance with procedures in Section 61-1-31.1 NMSA 1978. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: Laws 1993, ch. 171, § 17; 1997, ch. 218, § 12; 2022, ch. 39, § 76.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, provided for expedited licensure, provided that the board of barbers and cosmetologists shall issue an expedited license without examination to a person who holds a valid, unrestricted license in another licensing jurisdiction, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in Subsection A, after "under the provisions of", deleted "that" and added "the Barbers and Cosmetologists"; in Subsection B, after "The board", deleted "may" and added "shall", after "holds a", deleted "current" and added "valid, unrestricted", and

deleted "state, territory or possession of the United States or the District of Columbia, that has training hours and qualifications similar to or exceeding those required for licensure in New Mexico; and" and added "licensing jurisdiction", and deleted former Paragraph B(2); and added Subsection C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 1997 amendment substituted "licensed as a barber, a cosmetologist, an esthetician" for "licensed or certified as a barber, or cosmetologist" near the beginning of Subsection A, deleted "or certified" and "or certificate" following "licensed" and "license", respectively, near the end of Subsection A, in Subsection B, deleted "submits proof that he" at the end of the introductory paragraph and deleted "or certification" following "license" in Paragraph (1). Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

61-17A-18. License to be displayed; notice of change of place of business. (Repealed effective July 1, 2026.)

Every holder of a license issued pursuant to the Barbers and Cosmetologists Act shall notify the department of any change in place of business. A license shall be displayed conspicuously at the holder's place of business.

History: Laws 1993, ch. 171, § 18; 1997, ch. 218, § 13; 2022, ch. 39, § 77.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, required every holder of a license issued pursuant to the Barbers and Cosmetologists Act to notify the department of regulation and licensing of any change in place of business, and removed a provision requiring notification be made to the executive director; and after "holder of a license", added "issued pursuant to the Barbers and

Cosmetologists Act", after "shall notify the", deleted "executive director" and added "department", and deleted "Upon receipt of the notification, the executive director shall make the necessary change in the books."

The 1997 amendment rewrote this section to the extent that a detailed comparison is impracticable. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

61-17A-19. License nontransferable. (Repealed effective July 1, 2026.)

Each license shall be issued under the authority of the Barbers and Cosmetologists Act by the department in the name of the licensee. The license may not be the subject of a sale, transfer, assignment, conveyance, lease, bequest, gift or other means of transfer.

History: Laws 1993, ch. 171, § 19; 2022, ch. 39, § 78.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, substituted the board of barbers and cosmetologists with the

department of regulation and licensing as the entity under whose authority licenses are issued; and after "Barbers and Cosmetologists Act by the", deleted "board" and added "department".

61-17A-20. Duration, restoration and renewal of licenses. (Repealed effective July 1, 2026.)

A. The original issuance and renewal of licenses to practice as a barber, hairstylist, cosmetologist, instructor, esthetician, manicurist-pedicurist or electrologist shall be for a period of two years or less from the date of issuance. If the licensee fails to renew the license for the next two-year period, the license is void; provided the license may be restored at any time during the year following expiration upon the payment of the appropriate fee and a late charge not to exceed one hundred dollars (\$100) as set forth by board rules. If the licensee fails to restore the license within one year following its expiration, the licensee may request restoration of the license pursuant to rules promulgated by the board.

B. The original issuance and annual renewal of licenses to operate an establishment or school shall be for a period of twelve months or less following the issuance of the license. If the licensee fails to renew the license within thirty days after its expiration, the license is void, and, to again obtain a license, an application, required documentation, payment of the renewal fee and a late fee not to exceed one hundred dollars (\$100) as established by board rules is required.

C. The board may establish a staggered system of license expiration.

History: Laws 1993, ch. 171, § 20; 1997, ch. 218, § 14; 2007, ch. 181, § 17; 2017, ch. 112, § 8; 2019, ch. 243, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-17A-25 NMSA 1978.

The 2019 amendment, effective July 1, 2019, increased the duration of a license issued to a barber, hairstylist, cosmetologist, instructor, esthetician, manicurist-pedicurist or electrologists from one to two years; in Subsection A, after "for a period of", deleted "one year" and added "two years", and after "for the next", deleted "year" and added "two-year period".

The 2017 amendment, effective June 16, 2017, provided that the original issuance and renewal of licenses to practice as a hairstylist shall be for a period of one year or less from the date of issuance; in Subsection A, after "barber," added "hairstylist".

The 2007 amendment, effective June 15, 2007, appropriates \$300,000 from the barbers and cosmetology fund to the board of barbers and cosmetologists for expenditure in fiscal year 2008 for administration of the Body Art Safe Practices Act.

The 1997 amendment rewrote this section to the extent that a detailed comparison is impracticable. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See

Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 12.

61-17A-21. Grounds for refusal to issue, renew, suspend or revoke a license. (Repealed effective July 1, 2026.)

A. The board shall, in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], issue a fine or penalty, restrict, refuse to issue or renew or shall suspend or revoke a license for any one or more of the following causes:

- (1) the commission of any offense described in the Barbers and Cosmetologists Act;
- (2) the violation of any sanitary regulation promulgated by the board;
- (3) malpractice or incompetency;
- (4) advertising by means of knowingly false or deceptive statements;
- (5) working in a capacity regulated pursuant to the Barbers and Cosmetologists Act while under the influence of intoxicating liquor or drugs;
- (6) continuing to practice in or be employed by an establishment, an enterprise, a school or an electrology clinic in which the sanitary rules of the board, of the department of health or of any other lawfully constituted board or state agency, promulgated for the regulation of establishments, enterprises, schools or electrology clinics, are known by the licensee to be violated;
- (7) default of a licensee on a student loan;
- (8) gross continued negligence in observing the rules and regulations;
- (9) renting, loaning or allowing the use of the license to any person not licensed under the provisions of the Barbers and Cosmetologists Act;
- (10) dishonesty or unfair or deceptive practices;
- (11) sexual, racial or religious harassment;
- (12) conduct of illegal activities in an establishment, enterprise, school or electrology clinic or by a licensee; or
- (13) aiding, abetting or conspiring to evade or violate the provisions of the Barbers and Cosmetologists Act.

B. Any license suspended or revoked shall be delivered to the department or any agent of the department upon demand.

History: Laws 1993, ch. 171, § 21; 1997, ch. 218, § 15; 2022, ch. 39, § 79.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, removed "habitual drunkenness or habitual addiction to the use of habit-forming drugs" and "conviction of a crime involving moral turpitude" from the list of grounds for refusal to issue, renew, suspend or revoke a license, added "working in a capacity regulated pursuant to the Barbers and Cosmetologists Act while under the influence of intoxicating liquor or drugs" to the list of grounds for refusal to issue, renew, suspend or revoke a license, and provided that any suspended or revoked license shall be delivered to the department of regulation and licensing; in Subsection A, deleted former Paragraph A(5) and added a new Paragraph A(5), deleted former Paragraph A(13) and redesignated former Paragraph A(14) as Paragraph A(13); and in Subsection B, changed each occurrence of "board" to "department".

The 1997 amendment, in Subsection A, substituted "continuing to practice in or be employed by an

establishment, an enterprise, a school or an electrology clinic" for "continuing to be employed or practicing in an establishment" at the beginning of Paragraph (6) and inserted "enterprise" near the end of Paragraph (6), substituted "default of a licensee" for "notification of a licensee's default" in Paragraph (7), inserted "enterprise, school or electrology clinic" in Paragraph (12), and made a stylistic change in Paragraph (9). Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ANNOTATIONS

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 12.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses § 44.

61-17A-22. Exemptions. (Repealed effective July 1, 2026.)

The following persons are exempt from the provisions of the Barbers and Cosmetologists Act while in the discharge of their professional duties:

- A. persons licensed by the law of this state to practice medicine and surgery or chiropractic;
- B. commissioned medical or surgical officers of the United States army, navy or marine hospital service;
- C. registered nurses;
- D. funeral service practitioners; and
- E. persons providing only eyebrow-threading services.

History: Laws 1993, ch. 171, § 22; 2017, ch. 108, § 2.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2017 amendment, effective June 16, 2017, exempted persons who provide only eyebrow threading

services from the provisions of the Barbers and Cosmetologists Act; and added Subsection E.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 11.

61-17A-23. Penalties. (Repealed effective July 1, 2026.)

Each of the following constitutes a misdemeanor punishable upon conviction by a fine of less than one thousand dollars (\$1,000) or by imprisonment in the county jail for less than one year, or both, in the discretion of the court:

- A. the violation of any of the provisions of the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978] or a violation of any regulation promulgated pursuant to that act;
- B. obtaining or attempting to obtain a license for money other than the required fee or for any other thing of value or by fraudulent misrepresentations; or
- C. practicing or attempting to practice by fraudulent misrepresentations.

History: Laws 1993, ch. 171, § 23.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Bribery §§ 4 to 7.

61-17A-24. Criminal offender's character evaluation. (Repealed effective July 1, 2026.)

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978].

History: Laws 1993, ch. 171, § 24.

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

61-17A-25. Termination of agency life; delayed repeal. (Repealed effective July 1, 2026.)

The board of barbers and cosmetologists is terminated on July 1, 2025 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Barbers and Cosmetologists Act until July 1, 2026. Effective July 1, 2026, the Barbers and Cosmetologists Act is repealed.

History: Laws 1993, ch. 171, § 27; 1997, ch. 218, § 16; 2001, ch. 100, § 1; 2005, ch. 208, § 15; 2013, ch. 166, § 4; 2019, ch. 168, § 2.

The 2019 amendment, effective July 1, 2019, extended the termination date for the board of barbers and

cosmetologists; and changed "July 1, 2019", to "July 1, 2025", and changed "July 1, 2020", to "July 1, 2026".

The 2013 amendment, effective June 14, 2013, changed the agency termination date from 2013 to 2019,

the termination of the operations date from 2014 to 2020, and the repeal date from 2014 to 2020.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

The 2001 amendment, effective July 1, 2001, extended the life of the board of barbers and cosmetologists by changing the termination date of the board from July 1, 2001 to July 1, 2005 and delaying the repeal of the Barbers and Cosmetologists Act from July 1, 2002 to July 1, 2006.

The 1997 amendment substituted "July 1, 2001" for "July 1, 1998" in the first sentence and substituted "July 1, 2002" for "July 1, 1999" in the second and third sentences. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ARTICLE 17B

Body Art Safe Practices Act

Sec.

61-17B-1. Short title. (Repealed effective July 1, 2028.)

61-17B-2. Purpose. (Repealed effective July 1, 2028.)

61-17B-3. Definitions. (Repealed effective July 1, 2028.)

61-17B-4. Issuance of a body art license. (Repealed effective July 1, 2028.)

61-17B-5. License; application; renewal; expedited licensure; revocation; suspension. (Repealed effective July 1, 2028.)

61-17B-6. Inspection by board. (Repealed effective July 1, 2028.)

61-17B-7. Exemptions. (Repealed effective July 1, 2028.)

61-17B-8. Sterile procedures and sanitation. (Repealed effective July 1, 2028.)

61-17B-9. Immediate suspension. (Repealed effective July 1, 2028.)

61-17B-10. Judicial review. (Repealed effective July 1, 2028.)

Sec.

61-17B-11. Enforcement. (Repealed effective July 1, 2028.)

61-17B-12. Repealed.

61-17B-13. Municipalities. (Repealed effective July 1, 2028.)

61-17B-14. Repealed.

61-17B-15. Board created; membership. (Repealed effective July 1, 2028.)

61-17B-16. Board powers and duties. (Repealed effective July 1, 2028.)

61-17B-17. Body art practitioners fund created. (Repealed effective July 1, 2028.)

61-17B-18. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

61-17B-1. Short title. (Repealed effective July 1, 2028.)

Chapter 61, Article 17B NMSA 1978 may be cited as the "Body Art Safe Practices Act".

History: Laws 2007, ch. 181, § 1; 2015, ch. 129, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

The 2015 amendment, effective July 1, 2015, changed the statutory reference of the Body Art Safe Practices Act from "Sections 1 through 14 of this act" to "Chapter 61, Article 17B NMSA 1978".

Temporary provisions. — Laws 2015, ch. 129, § 10 provided:

A. On July 1, 2015:

(1) all personnel and all money, appropriations, records, furniture, equipment, supplies and other property that belonged or were allocated to the board of barbers and cosmetologists for use in connection with the implementation of the Body Art Safe Practices Act are transferred to the board of body art practitioners;

(2) all money that is in the barbers and cosmetologists fund that was paid into the fund pursuant to the Body Art Safe Practices Act or regulations promulgated pursuant to that act shall be transferred to the body art practitioners fund;

(3) all existing contracts, agreements and other obligations that relate to the Body Art Safe Practices Act or the board of barbers and cosmetologists work pursuant to that act shall be binding on the board of body art practitioners;

(4) all pending court cases, legal actions, appeals and other legal proceedings and all pending administrative proceedings that involve the board of barbers and cosmetologists that relate solely to the implementation of the Body Art Safe Practices Act shall be unaffected and shall continue in the name of the board of body art practitioners. Pending legal or administrative proceedings described in this paragraph that relate to the board of barbers and cosmetologists and to the implementation of the Body Art Safe Practices Act shall be unaffected, but the board of body art practitioners shall be joined as a party;

(5) all rules, orders and other official acts of the board of barbers and cosmetologists pursuant to the Body Art Safe Practices Act shall continue in effect until amended, replaced or repealed by the board of body art practitioners; and

(6) references in the law, rules and orders to the board of barbers and cosmetologists in connection with the Body Art Safe Practices Act shall be deemed references to the board of body art practitioners.

B. Licenses that were issued before the effective date of this act by the board of barbers and cosmetologists pursuant to the Body Art Safe Practices Act shall remain in effect until the license expires or is renewed or reissued by the board of body art practitioners.

61-17B-2. Purpose. (Repealed effective July 1, 2028.)

The purpose of the Body Art Safe Practices Act is to provide a safe and healthy environment for the administration of body art.

History: Laws 2007, ch. 181, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

61-17B-3. Definitions. (Repealed effective July 1, 2028.)

As used in the Body Art Safe Practices Act:

- A. "board" means the board of body art practitioners;
- B. "body art" means tattooing, body piercing or scarification but does not include practices that are considered medical procedures by the New Mexico medical board;
- C. "body art establishment" means a fixed or mobile place where body art is administered on the premises;
- D. "body artist" means a person who administers body piercing, tattooing or scarification;
- E. "body piercing" means to cut, stab or penetrate the skin to create a permanent hole or opening;
- F. "equipment" means machinery used in connection with the operation of a body art establishment, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and other apparatuses and appurtenances;
- G. "instruments used for body art" means hand pieces, needles, needle bars and other items that may come into contact with a person's body during the administration of body art;
- H. "operator" means the owner in charge of a body art establishment;
- I. "scarification" means cutting into the skin with a sharp instrument or branding the skin with a heated instrument to produce a permanent mark or design on the skin;
- J. "sharps" means any sterilized object that is used for the purpose of penetrating the skin or mucosa, including needles, scalpel blades and razor blades;
- K. "single use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves;
- L. "sterilization" means destruction of all forms of microbiotic life, including spores; and
- M. "tattooing" means the practice of depositing pigment, which is either permanent, semipermanent or temporary, into the epidermis using needles by someone other than a state-licensed physician or a person under the supervision of a state-licensed physician and includes permanent cosmetics, dermography, micropigmentation, permanent color technology and micropigment implantation.

History: Laws 2007, ch. 181, § 3; 2015, ch. 129, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

The 2015 amendment, effective July 1, 2015, replaced the board of barbers and cosmetologists with "the board

of body art practitioners" in the meaning of "board" in the definitions section of the Body Art Safe Practices Act; in Subsection A, after "the board of", deleted "barbers and cosmetologists" and added "body art practitioners".

61-17B-4. Issuance of a body art license. (Repealed effective July 1, 2028.)

The board has authority to issue a body art license to a body artist who has demonstrated the ability to perform body art and who conforms with the board's rules with respect to safety, sterilization and sanitation and a body art operator license to an operator who conforms with the board's rules.

History: Laws 2007, ch. 181, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

61-17B-5. License; application; renewal; expedited licensure; revocation; suspension. (Repealed effective July 1, 2028.)

A. A body artist shall obtain a body art license, and an operator shall obtain a body art establishment license, the requirements for which shall be defined by the board by rules promulgated in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and shall include the requirement that a body artist applicant demonstrate that the body artist has the training and experience necessary to perform body piercing, tattooing or scarification and the requirement that a sanitary and sterile body art establishment be maintained; provided that the board shall grant credit for training and experience obtained from any source, whether obtained within or outside the state, if the applicant demonstrates that the applicant meets the training and experience required pursuant to the Body Art Safe Practices Act.

B. An operator or body artist shall possess and post in a conspicuous place a valid license issued by the board in accordance with the Body Art Safe Practices Act and the rules promulgated pursuant to that act. An operator or a body artist shall not display a license unless it has been issued to that operator or body artist by the board and has not been suspended or revoked.

C. An operator or body artist shall apply to the board for the issuance or renewal of a license annually and shall pay license fees established by the board. Except as provided in Section 61-1-34 NMSA 1978, the board shall set license fees and license renewal fees not to exceed three hundred dollars (\$300) and late fees not to exceed one hundred dollars (\$100). If an operator or body artist fails to renew a license for the next year, the license is void; provided that the voided license may be restored at any time during the year following the license's expiration upon the payment of the appropriate license renewal fee and a late charge not to exceed one hundred dollars (\$100) as set forth by board rules. If the operator or body artist fails to restore a license within one year following the license's expiration, the operator or body artist may request restoration of the license pursuant to rules promulgated by the board.

D. As soon as practicable, but no later than thirty days after an application is submitted, the board shall process the application and issue an expedited license in accordance with Section 61-1-31.1 NMSA 1978 to a person licensed in another licensing jurisdiction. The board by rule shall determine those states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and those foreign countries from which it will accept an application for expedited licensure. The lists of disapproved and approved licensing jurisdictions shall be posted on the board's website. The list of disapproved licensing jurisdictions shall include specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

E. The board may suspend or revoke a license for a body art establishment or a body artist who fails to comply with a provision of the Body Art Safe Practices Act or rules promulgated pursuant to that act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978]. A license shall not be suspended or revoked without providing the operator or the body artist with an opportunity for an administrative hearing unless conditions in the body art establishment warrant immediate suspension pursuant to Section 61-17B-9 NMSA 1978. The hearing officer shall not be a person previously involved in the suspension or revocation action. An inspection made more than twenty-four months prior to the most recent inspection shall not be used as a basis for suspension or revocation.

F. Except as provided in Section 61-1-34 NMSA 1978, the board shall charge a fee not to exceed three hundred dollars (\$300) for the application to issue a new or renewed license. The applicant shall provide proof of current immunization as required by the board and proof of the applicant's attendance at a blood-borne pathogen training program and other training as required by the board before a license is issued or renewed.

G. A current body art license or body art establishment license shall not be transferable from one person to another.

H. The following information shall be kept on the premises of a body art establishment and shall be available for inspection by the board:

- (1) the full names of all employees in the establishment and their exact duties;
- (2) the board-issued license with identification photograph for the operator and any body artists;
- (3) the body art establishment name and hours of operation;
- (4) the name and address of the operator;
- (5) a complete description of all body art performed at the body art establishment;
- (6) a list of all instruments, body jewelry, sharps and inks used at the body art establishment, including names of manufacturers and serial or lot numbers or invoices or other documentation sufficient to identify and locate the manufacturer of those items; and
- (7) a current copy of the Body Art Safe Practices Act.

I. An operator shall notify the board in writing not less than thirty days before changing the location of a body art establishment. The notice shall include the street address of the body art establishment's new location.

History: Laws 2007, ch. 181, § 5; 2015, ch. 129, § 5; 2019, ch. 245, § 1; 2020, ch. 8, § 46; 2021, ch. 92, § 13; 2022, ch. 39, § 80.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of body art practitioners is required to follow the provisions of the State Rules Act when promulgating rules and to follow the provisions of the Uniform Licensing Act in disciplinary matters, provided that license fees and license renewal fees shall not exceed three hundred dollars and that late fees shall not exceed one hundred dollars, provided that the board of body art practitioners shall issue an expedited license to a person licensed in another licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "renewal; expedited licensure"; in Subsection A, after "defined by the board", added "by rules promulgated in accordance with the State Rules Act", and after "the applicant demonstrates", deleted "the training and experience received by the applicant is equivalent to the" and added "the applicant meets the"; in Subsection B, after "place a valid", deleted "and unsuspended"; in Subsection C, after "license renewal fees", deleted "and late fees in amounts necessary to administer the provisions of the Body Art Safe Practices Act" and added "not to exceed three hundred dollars (\$300) and late fees not to exceed one hundred dollars (\$100)"; added a new Subsection D and redesignated former Subsections D through H as Subsections E through I, respectively; and in Subsection E, after "The board", deleted "shall promulgate rules for the revocation or suspension of" and added "may suspend or revoke", after "pursuant to that act", added "in accordance with the Uniform Licensing Act", and after "suspended or revoked", deleted "pursuant to the Body Art Safe Practices Act".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or

different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2021 amendment, effective June 18, 2021, provided for the waiver of license fees and license renewal fees for military service members and veterans; and in Subsection C, after "established by the board", added "Except as provided in Section 61-1-34 NMSA 1978".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection E, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2019 amendment, effective April 4, 2019, required the board of body art practitioners to grant credit to an applicant for licensure for training or experience obtained outside the state; in Subsection A, after the semicolon, added "provided that the board shall grant credit for training and experience obtained from any source, whether obtained within or outside the state, if the applicant demonstrates that the training and experience received by the applicant is equivalent to the training and experience required pursuant to the Body Art Safe Practices Act".

The 2015 amendment, effective July 1, 2015, provided for license requirements for body artists and required the board of body art practitioners to promulgate rules for body artists in accordance with the Body Art Safe Practices Act; in Subsection A, after "body art license", added "and an operator shall obtain a body art establishment license, the", after "defined by the board", added "and shall include the requirement", after "that", added "a body artist applicant", after "scarification and", deleted "to establish and maintain" and added "the requirement that", and after "body art establishment", added "be maintained"; in Subsection B, after "has been issued to", deleted "the" and added "that"; in Subsection C, after "the issuance", added "or renewal", after "by the board.", deleted "The operator or body artist shall renew the license annually.", after "shall set license fees", deleted "and", after "license renewal fees", added "and late fees", and after "Body Art Safe Practices Act.", added the remainder of the section; in Subsection D, after "suspension of a license for", deleted "an operator" and added "a body art establishment", after "Body Art Safe Practices Act", added "or rules promulgated pursuant to that act", after "operator or the body artist", added "with", and after "Section", deleted "9 of the Body Art Safe Practices Act" and added "61-17B-9 NMSA 1978"; in Subsection E, after "application", deleted "or annual renewal of a" and added "to issue a new or renewed", after "The", deleted "operator or body artist" and added

"applicant", after "required by the board", added "and proof of the applicant's", and after "training as required", deleted "and approved"; in Subsection F, after "current body art", added "license", and after "or body art", deleted "operator" and added "establishment"; deleted Subsection G and redesignated the succeeding subsections accordingly; in the introductory sentence of Subsection G, after "shall be kept", deleted "on file" after "establishment and", added "shall be"; in Paragraph (2) of Subsection G, after "photograph", added "for the operator and any body

artists"; in Paragraph (4) of Subsection G, after "address of the", deleted "body art establishment owner" and added "operator"; in Paragraph (5) of Subsection G, after "performed", added "at the body art establishment"; in Paragraph (6) of Subsection G, after "inks used", added "at the body art establishment", and after "manufacturer", added "of those items"; in Paragraph (7) of Subsection G, after "a", added "current"; and in Subsection H, after "address of the", added "body art establishment's".

61-17B-6. Inspection by board. (Repealed effective July 1, 2028.)

A. The board shall annually inspect body art establishments to determine compliance with the Body Art Safe Practices Act. An operator or body artist shall allow a board official, upon proper identification, to enter the premises, inspect all parts of the premises and inspect and copy records of the body art establishment. The operator or body artist shall be given an opportunity to accompany the board official on the inspection and to receive a report of the inspection within fourteen days after the inspection.

B. Refusal to allow an inspection is grounds for suspension or revocation of the license of the operator or body artist, provided that the board official tendered proper identification prior to the refusal.

History: Laws 2007, ch. 181, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

61-17B-7. Exemptions. (Repealed effective July 1, 2028.)

A. A person who pierces only the outer perimeter of the ear, not including any cartilage, using a pre-sterilized encapsulated single use stud ear piercing system, implementing appropriate procedures, is exempt from the requirements of the Body Art Safe Practices Act.

B. A member of a federally recognized tribe, band, nation or pueblo who performs scarification rituals for religious purposes is exempt from the requirements of the Body Art Safe Practices Act.

History: Laws 2007, ch. 181, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

61-17B-8. Sterile procedures and sanitation. (Repealed effective July 1, 2028.)

The board shall establish by rule requirements for:

- A. the use and disposal of equipment and instruments; provided that:
 - (1) all sharps shall be sterilized prior to use;
 - (2) single use items shall not be used on more than one client for any reason; and
 - (3) all body art stencils shall be single use and disposable;
- B. the sterilization or sanitation of non-disposable items;
- C. the prohibition of off-site sterilization; and
- D. procedures to control disease borne by contact with customer or body artist skin mucosa.

History: Laws 2007, ch. 181, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

61-17B-9. Immediate suspension. (Repealed effective July 1, 2028.)

The board may suspend a license immediately without prior notice to the holder of the license if it determines, after inspection, that conditions within a body art establishment present a substantial danger of illness, serious physical harm or death to customers who might patronize a body art establishment. A suspension action taken pursuant to this section is effective when communicated to the operator or body artist. Suspension action taken pursuant to this section shall not continue beyond the time that the conditions causing the suspension cease to exist, as determined by a board inspection at the request of the operator or body artist. A license holder may request an administrative hearing, as provided by Section 5 [61-17B-5 NMSA 1978] of the Body Art Safe Practices Act, if the board does not lift an immediate suspension within ten days.

History: Laws 2007, ch. 181, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

61-17B-10. Judicial review. (Repealed effective July 1, 2028.)

An applicant denied a license or an operator or body artist whose license is suspended or revoked by the board may appeal pursuant to Section 39-3-1.1 NMSA 1978.

History: Laws 2007, ch. 181, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

61-17B-11. Enforcement. (Repealed effective July 1, 2028.)

A. The board may seek relief in district court to enjoin the operation of a body art establishment or the practice of a body artist not in compliance with the Body Art Safe Practices Act.

B. The district court may impose a civil penalty not exceeding five hundred dollars (\$500) for a violation of the Body Art Safe Practices Act. Each violation of the provisions of the Body Art Safe Practices Act constitutes a separate offense.

C. The board may promulgate rules imposing a schedule of penalties for violations of the Body Art Safe Practices Act. Except as provided in Subsection D of this section, no penalty shall exceed one hundred fifty dollars (\$150).

D. Penalties for the following violations shall not exceed one thousand dollars (\$1,000):

- (1) obtaining or attempting to obtain a license by fraudulent misrepresentation;
- (2) willfully falsifying by oath or affirmation information required pursuant to the Body Art Safe Practices Act; or
- (3) practicing or attempting to practice under an assumed name or by fraudulent misrepresentation.

History: Laws 2007, ch. 181, § 11; 2013, ch. 162, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

The 2013 amendment, effective June 14, 2013, added penalties; in the title, added "penalties"; in Subsection C,

in the second sentence, at the beginning of the sentence, deletes "provided that" and added "Except as provided in Subsection D of this section", and after "no penalty", deleted "exceeds" and added "shall exceed"; and added Subsection D.

61-17B-12. Repealed.

Repeals. — Laws 2015, ch. 129, § 11 repealed 61-17B-12 NMSA 1978, as enacted by Laws 2007, ch. 181, § 12, relating to the use of barbers and cosmetologists fund,

effective July 1, 2015. For provisions of former section, see the 2014 NMSA 1978 on NMOneSource.com.

61-17B-13. Municipalities. (Repealed effective July 1, 2028.)

The Body Art Safe Practices Act provides minimum standards for safe body art practices. A municipality may by ordinance provide more stringent standards.

History: Laws 2007, ch. 181, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

61-17B-14. Repealed.

Repeals. — Laws 2015, ch. 129, § 11 repealed 61-17B-14 NMSA 1978, as enacted by Laws 2007, ch. 181, § 14, relating to the promulgation of rules, effective July 1, 2015.

For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

61-17B-15. Board created; membership. (Repealed effective July 1, 2028.)

A. The "board of body art practitioners" is created. The board is administratively attached to the regulation and licensing department and consists of five members appointed by the governor. Members shall serve three-year terms; provided that at the time of initial appointment, the governor shall appoint members to abbreviated terms to allow for the terms of subsequent appointments to be staggered. Vacancies shall be filled in the manner of the original appointment.

B. Of the five members of the board, two shall be licensed pursuant to the Body Art Safe Practices Act and shall have at least five years' practical experience in their occupations. Of those two, one member shall be an operator and one member shall be a body artist. The remaining three members shall be public members. The public members shall not have ever been licensed pursuant to the provisions of the Body Art Safe Practices Act or similar prior legislation or have a financial interest in a body art establishment.

C. Members of the board shall be reimbursed pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

D. The board shall elect from among its members a chair and such other officers as it deems necessary. The board shall meet at the call of the chair, not less than two times each year. A majority of members currently serving constitutes a quorum for the conduct of business.

E. A board member shall not serve more than two full consecutive terms, and a member who fails to attend three meetings shall automatically be recommended for removal unless the member's absence is excused for reasons set forth by board rule.

History: Laws 2015, ch. 129, § 6; 2019, ch. 245, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

The 2019 amendment, effective April 4, 2019, revised the composition of the board of body art practitioners; in Subsection B, after "Of the five members of the board," deleted "four" and added "two", after "Of those", deleted "four, two members" and added "two, one member", after "shall be an operator and", deleted "two members" and added "one member", and after "The remaining", deleted "one member" and added "three members".

Temporary provisions. — Laws 2019, ch. 245, § 3 provided that on or after April 4, 2019, the governor shall appoint two public members to serve on the board, one of whom shall replace one operator member and one of whom shall replace one body artist member so that the board shall be composed of three public members and two members licensed pursuant to the Body Art Safe Practices Act. The terms of the members shall remain staggered.

61-17B-16. Board powers and duties. (Repealed effective July 1, 2028.)

A. The board shall:

(1) in conjunction with the department of health, promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] necessary to implement the provisions of the Body Art Safe Practices Act;

- (2) establish fees;
- (3) establish standards and provide for the issuance of new and renewal operator and body artist licenses to applicants;
- (4) adopt a seal;
- (5) furnish copies of rules and sanitation and sterilization requirements promulgated by the board to each operator of a body art establishment;
- (6) keep a record of its proceedings, a register of applicants for licensure and a register of licensed operators and body artists;
- (7) issue cease and desist orders to persons who violate the provisions of the Body Art Safe Practices Act or rules promulgated pursuant to that act; and
- (8) deny, suspend or revoke a license or undertake any other disciplinary action in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

B. The board may establish continuing education or other requirements for licensure.

C. A member of the board, its employees or agents may enter and inspect a body art establishment at any time during regular business hours for the purpose of determining compliance with the Body Art Safe Practices Act.

History: Laws 2015, ch. 129, § 8; 2022, ch. 39, § 81.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of body art practitioners is required to follow the provisions of the State Rules Act when

promulgating rules and to follow the provisions of the Uniform Licensing Act in disciplinary matters; and in Subsection A, Paragraph A(1), after "promulgate rules", added "in accordance with the State Rules Act", and added Paragraph A(8).

61-17B-17. Body art practitioners fund created. (Repealed effective July 1, 2028.)

The "body art practitioners fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations; license fees and charges that are imposed by the board; and money otherwise accruing to the fund. Money in the fund is appropriated to the board for the purpose of carrying out the provisions of the Body Art Safe Practices Act. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the chair of the board or the chair's authorized representative. Any balance remaining in the fund at the end of a fiscal year shall not revert to the general fund.

History: Laws 2015, ch. 129, § 7; 2022, ch. 39, § 82.

Delayed repeals. — For delayed repeal of this section, see 61-17B-18 NMSA 1978.

The 2022 amendment, effective May 18, 2022, provided that the body art practitioners fund may also consist of gifts, grants and donations, and eliminated the

depositing of fines in the body art practitioners fund; and after "The fund consists of appropriations", added "gifts, grants and donations", after "charges", deleted "and fines", and after "imposed by the board", deleted "and that shall be deposited into the fund".

61-17B-18. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)

The board of body art practitioners is terminated on July 1, 2027 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Body Art Safe Practices Act until July 1, 2028. Effective July 1, 2028, the Body Art Safe Practices Act is repealed.

History: Laws 2015, ch. 129, § 9; 2022, ch. 39, § 83.

The 2022 amendment, effective May 18, 2022, changed "July 1, 2021", to "July 1, 2027", and changed "July 1, 2022" to "July 1, 2028".

ARTICLE 18

Collection Agencies (Repealed.)

(Repealed by Laws 1987, ch. 252, § 34.)

61-18-1 to 61-18-67. Repealed.

Repeals. — Laws 1987, ch. 252, § 34 repeals former 61-18-1 to 61-18-67 NMSA 1978, as enacted by Laws 1957, Chapter 218, Laws 1974, Chapter 78, Laws 1978, Chapter 11, and Laws 1979, Chapter 27 and as amended by Laws 1961, Chapter 49, Laws 1973, Chapter 338, Laws 1974, Chapter 78, Laws 1977, Chapter 245, Laws 1977, Chapter 306, and Laws 1978, Chapter 11, relating to collection agencies, effective July 1, 1987. For provisions of former sections, see 1981 Replacement Pamphlet. For

present comparable provisions, see 61-18A-1 to 61-18A-33 NMSA 1978.

Laws 1987, ch. 298, § 10 purported to amend 61-18-61 NMSA 1978, but, due to the prior 1987 repeal, that amendment was not given effect.

Laws 1987, ch. 292, § 14 purported to amend 61-18-64 NMSA 1978, but, due to the prior 1987 repeal, that amendment was not given effect.

ARTICLE 18A

Collection Agencies

Sec.	Sec.
61-18A-1. Short title.	61-18A-17. Right granted by license.
61-18A-2. Definitions.	61-18A-18. Repealed.
61-18A-3. Administration and enforcement.	61-18A-19. Change of location; ownership or name; duplicate license.
61-18A-4. Rules; violations.	61-18A-20. Temporary license.
61-18A-5. Unlawful to conduct collection agency or engage in the business of a repossessor without license.	61-18A-21. Branch office.
61-18A-6. Penalty for violations.	61-18A-22. Office management; license.
61-18A-7. Application for license.	61-18A-23. Loss of qualified person.
61-18A-8. Applications; required information.	61-18A-24. Repealed.
61-18A-9. Financial statement.	61-18A-25. Unauthorized practice as collection agency.
61-18A-10. Manager's license and examination.	61-18A-26. Assignments; right to sue.
61-18A-11. Qualification of manager applicants.	61-18A-27. Renewal of license; fee.
61-18A-12. Approval of applications.	61-18A-28. Remittance of collections to clients.
61-18A-13. Denial of applications.	61-18A-28.1. Additional collection from debtors.
61-18A-14. License to foreign corporation or partnership.	61-18A-29. Repealed.
61-18A-15. Surety bond.	61-18A-30. Fees.
61-18A-16. Information to be included in collection agency license.	61-18A-31. Deposit of money.
	61-18A-32. Judicial review.
	61-18A-33. Grandfather clause.

61-18A-1. Short title.

Chapter 61, Article 18A NMSA 1978 may be cited as the "Collection Agency Regulatory Act".

History: Laws 1987, ch. 252, § 1; 2019, ch. 144, § 24.

The 2019 amendment, effective July 1, 2019, provided the statutory citation for the Collection Agency Regulatory Act; after the section heading, deleted "This act" and added "Chapter 61, Article 18A NMSA 1978".

ANNOTATIONS

Collection agency may not practice law directly.

— A collection agency engages in the unauthorized practice of law when it represents parties before judicial bodies, prepares pleadings, manages litigation, gives legal advice, renders services requiring legal skill, or prepares instruments which secure legal rights. *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, 85 N.M. 521, 514 P.2d 40.

Collection agency may not practice law indirectly.

— Soliciting assignments of claims on a contingent fee basis and filing suit thereon on the same basis constitutes the practice of law. *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, 85 N.M. 521, 514 P.2d 40.

Collection agency may not practice law by pro forma assignments. — Where the agency procures the assignment merely to facilitate filing suit, legal services are in effect offered; this is unauthorized practice. *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, 85 N.M. 521, 514 P.2d 40.

Section 61-18A-26 NMSA 1978 does not authorize the practice of taking the assignment of debts from an underlying creditor on a contingency fee basis and the filing of a suit by the collection agency's own attorneys in the

collection agency's own name. *Kolker v. Duke City Collection Agency*, 750 F. Supp. 468 (D.N.M. 1990).

Collection agency may not control litigation. — Where assignment is pro forma, the fact that the agency directs the litigation constitutes the unauthorized practice of law. *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, 85 N.M. 521, 514 P.2d 40.

Collection agency may not practice law by procuring legal services. — A collection agency may solicit claims for collection, but it engages in the unauthorized practice of law when it holds out that it can procure or perform legal services in the collection process. 1974 Op. Att'y Gen. No. 74-28.

Creditor must select attorney freely. — If nonlitigation methods fail, the agency must refer the claim back to the creditor and must advise him to select an attorney of his own choice. For the agency to take a pro forma interest in the claim to enable it to file suit in its own name is to actually furnish legal services and as such is unauthorized. 1974 Op. Att'y Gen. No. 74-28.

Collection agency may not otherwise interfere with attorney-client relation. — If the creditor selects an attorney who is also an agency attorney, the agency may not control the litigation or interfere in any way with the attorney-client relationship; such control or interference constitutes the unauthorized practice of law. 1974 Op. Att'y Gen. No. 74-28.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A Am. Jur. 2d Collection and Credit Agencies §§ 1 to 10, 15, 16.

Regulation and licensing of collection and commercial agencies or representatives thereof, 54 A.L.R.2d 881.

Liability of collection agency for failure to pursue claim, 76 A.L.R.2d 1155.

Civil liability of attorney for abuse of process, 97 A.L.R.3d 688.

What constitutes "debt" for purposes of Fair Debt Collection Practices Act (15 U.S.C.A. § 1692a(5)), 159 A.L.R. Fed. 121.

61-18A-2. Definitions.

As used in the Collection Agency Regulatory Act:

- A. "division" means the financial institutions division of the regulation and licensing department;
- B. "director" means the director of the division or a duly authorized agent designated by the director;
- C. "collection agency" means a person engaging in business for the purpose of collecting or attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, where such person is so engaged by two or more creditors, or a person engaging in the business the principal purpose of which is the collection of debts. The term also includes a creditor who, in the process of collecting the creditor's own debts, uses any name other than the creditor's own that would indicate that a third person is collecting or attempting to collect the debts. The term does not include:
 - (1) an officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
 - (2) a person while collecting debts for another person, both of whom are related by common ownership or affiliated by corporate control, if the person collects debts only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
 - (3) an officer or employee of the United States, a state or a political subdivision thereof to the extent that collecting or attempting to collect a debt is in the performance of official duties;
 - (4) a person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of a debt;
 - (5) a nonprofit organization that, at the request of debtors, performs bona fide consumer credit counseling and assists debtors in the liquidation of their debts by receiving payments from such debtors and distributing such amounts to creditors;
 - (6) an attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client; or
 - (7) a person collecting or attempting to collect a debt owed or due or asserted to be owed or due to another to the extent such activity:
 - (a) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
 - (b) concerns a debt that was originated by such person;
 - (c) concerns a debt that was not in default at the time it was obtained by such person; or
 - (d) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor;
- D. "communication" means the conveying of information regarding a debt directly or indirectly to a person through any medium;
- E. "creditor" means a person who offers or extends credit creating a debt or to whom a debt is owed, but the term does not include a person to the extent that the person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another;

F. "debt" means an obligation or alleged obligation of a debtor to pay money arising out of a transaction in which the money, property, insurance or services that are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment;

G. "debt collector" means a collection agency, a reposessor, a manager, a solicitor and an attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client;

H. "debtor" means a natural person obligated or allegedly obligated to pay a debt;

I. "location information" means a debtor's place of abode and the telephone number at such place or the debtor's place of employment;

J. "manager" means a natural person who qualifies under the Collection Agency Regulatory Act to be in full-time charge of a licensed collection agency and to whom a manager's license has been issued by the director;

K. "nationwide multistate licensing system and registry" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 to manage mortgage licenses and other financial services licenses, or a successor registry;

L. "person" means an individual, corporation, partnership, association, joint-stock company, trust where the interests of the beneficiaries are evidenced by a security, unincorporated organization, government or political subdivision of a government;

M. "reposessor" means a person engaged solely in the business of repossessing personal property for others for a fee. The term does not include a duly licensed collection agency; and

N. "solicitor" means a natural person who, through lawful means, communicates with debtors or solicits the payment of debts for a collection agency licensee by the use of telephone, personal contact, letters or other methods of collection conducted from and within the licensee's office.

History: Laws 1987, ch. 252, § 2; 2019, ch. 144, § 25; 2021, ch. 31, § 12.

Cross references. — For the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, see 12 USC §§ 5101 to 5116.

The 2021 amendment, effective July 1, 2021, revised the definition of "collection agency" as used in the Collection Agency Regulatory Act; and in Subsection C, after "two or more creditors", added "or a person engaging in the business the principal purpose of which is the collection of debts".

The 2019 amendment, effective July 1, 2019, defined "nationwide multistate licensing system and registry" and

revised the definition of "director" as used in the Collection Agency Regulatory Act, and made certain technical amendments; in Subsection B, after "director of the", deleted "financial institutions", after "division", deleted "of the regulation and licensing department" and added "or a duly authorized agent designated by the director"; and added new Subsection K.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes "debt" for purposes of Fair Debt Collection Practices Act (15 U.S.C.A. § 1692a(5)), 159 A.L.R. Fed. 121.

61-18A-3. Administration and enforcement.

A. The administration and enforcement of the Collection Agency Regulatory Act shall be vested in the office of the director as set forth in that act.

B. The director shall investigate violations or alleged violations of the Collection Agency Regulatory Act by persons engaged in business as collection agencies or repossessors who fail to obtain licenses.

C. The director may examine the business and the books, accounts, records and files used therein by a collection agency licensee, and for such purpose, the director shall have free access to the offices, places of business, books, accounts, records, papers, files, safes and vaults of all licensees and other persons engaging or attempting to engage in business as a collection agency.

D. Any examination reports or other documents or information developed in administration of this section are confidential and not subject to subpoena.

E. Applicants for a license issued pursuant to the Collection Agency Regulatory Act shall apply on a form prescribed by the director. Information required on the form shall be set forth by rule, instruction or procedure of the director and may be changed or updated as necessary by the director in order to carry out the purposes of the Collection Agency Regulatory Act.

F. In order to fulfill the purposes of the Collection Agency Regulatory Act, the director may establish relationships or contracts with the nationwide multistate licensing system and registry or other entities designated by the nationwide multistate licensing system and registry to collect and maintain records and process transaction fees or other fees related to licenses issued pursuant to the Collection Agency Regulatory Act.

G. An applicant for a license pursuant to the Collection Agency Regulatory Act shall, at a minimum, furnish to the nationwide multistate licensing system and registry information concerning the applicants identity, including:

(1) the applicant's personal history and experience in a form prescribed by the nationwide multistate licensing system and registry; and

(2) authorization for the nationwide multistate licensing system and registry and the director to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction regarding the applicant.

H. The director may use the nationwide multistate licensing system and registry as a channeling agent for requesting and distributing information provided pursuant to Paragraphs (1) and (2) of Subsection G of this section to and from any source as deemed appropriate by the director.

History: Laws 1987, ch. 252, § 3; 2019, ch. 144, § 26.

The 2019 amendment, effective July 1, 2019, revised certain licensing procedures for licenses required by the Collection Agency Regulatory Act, and provided for the director of the financial institutions division of the regulation and licensing department to utilize the nationwide

multistate licensing system and registry to receive and process applications for licenses; added new subsection designation "A." and redesignated former Subsections A through C as Subsections B through D, respectively; and added new Subsections E through H.

61-18A-4. Rules; violations.

A. The director shall promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce those rules as are reasonable or necessary for the examination and licensing of collection agencies, repossessioners, managers and solicitors, for the conduct of such persons and for the general enforcement of the various provisions of the Collection Agency Regulatory Act in the protection of the public.

B. The violation of any provisions of the Collection Agency Regulatory Act or of rules promulgated by the director is sufficient ground for revocation of a license or for other disciplinary action as provided in the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

C. A provision of the Collection Agency Regulatory Act imposing a liability shall not apply to an act done or omitted in good faith in conformity with a rule of the director, notwithstanding that after the act or omission has occurred, the rule is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

History: Laws 1987, ch. 252, § 4; 2022, ch. 39, § 84.

The 2022 amendment, effective May 18, 2022, clarified that the director of the financial institutions division is required to follow the provisions of the State Rules Act when promulgating rules and the provisions of the Uniform Licensing Act in disciplinary matters; in the section heading, deleted "and regulations"; in Subsection A, after

"The director shall", deleted "establish" and added "promulgate rules in accordance with the State Rules Act"; and in Subsection B, after "any provisions of", deleted "that" and added "the Collection Agency Regulatory", after "rules", deleted "and regulations established" and added "promulgated", and after "other disciplinary action", added "as provided in the Uniform Licensing Act".

61-18A-5. Unlawful to conduct collection agency or engage in the business of a repossessioner without license.

A. No person shall conduct within this state a collection agency, act as a collection agency manager or engage within the state in the business of collecting claims for others or of soliciting the right to collect or receive payment from another of any claim or advertise or solicit either in print, by letter, in person or otherwise, the right to collect or receive payment for another of any claim or seek to make collection or obtain payment of any claim on behalf of another without having first applied for and obtained the licenses required by the Collection Agency Regulatory Act [61-18A-1 NMSA 1978].

B. No person shall conduct within this state the business of a reposessor without having first applied for and obtained a reposessor's license.

C. No person shall be considered to be engaged in collection activity within this state if that person's activities regarding this state are limited to collecting debts not incurred in New Mexico from debtors located in this state by means of interstate communications, including telephone, mail or facsimile transmission, from the person's location in another state.

History: Laws 1987, ch. 252, § 5; 1993, ch. 213, § 1.
The 1993 amendment, effective June 18, 1993, added Subsection C.

Practices Act by engaging in collection activity in New Mexico without a license. *Russey v. Rankin*, 911 F. Supp. 1449 (D.N.M. 1995).

ANNOTATIONS

Violations of federal law. — A debt collection agency violated provisions of the federal Fair Debt Collection

61-18A-6. Penalty for violations.

A. In addition to any other penalty, any person or any officer or director of any partnership, corporation or association conducting business as a collection agency or reposessor without first having been licensed pursuant to the Collection Agency Regulatory Act [61-18A-1 NMSA 1978] or who carries on such business after the revocation or expiration of any license which the director has refused to renew, is guilty of a fourth degree felony.

B. Any person violating any other provision of that act is guilty of a misdemeanor.

History: Laws 1987, ch. 252, § 6.

61-18A-7. Application for license.

A. Application for a collection agency license, reposessor's license or manager's license shall be made to the director in such form as may be required by the director.

B. Applicants for an original license issued pursuant to the Collection Agency Regulatory Act for the period beginning July 1, 2020 and ending December 31, 2020 shall pay an amount equal to one-half of the original license fee for the applicable license as established pursuant to Section 61-18A-30 NMSA 1978.

C. Applicants for renewal of a license issued pursuant to the Collection Agency Regulatory Act with an expiration date of June 30, 2020 may apply for renewal of the license for the period beginning July 1, 2020 and ending December 31, 2020 and shall pay an amount equal to one-half of the renewal license fee for the applicable license as established pursuant to Section 61-18A-30 NMSA 1978.

D. Applicants for all licenses issued pursuant to the Collection Agency Regulatory Act beginning on or after January 1, 2021, and ending at the conclusion of the calendar year for which the license may be issued, shall pay an amount equal to the applicable original or renewal license fee as established pursuant to Section 61-18A-30 NMSA 1978.

History: Laws 1987, ch. 252, § 7; 1993, ch. 213, § 2; 2019, ch. 144, § 27.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2019 amendment, effective July 1, 2019, revised certain licensing procedures for licenses required by the

Collection Agency Regulatory Act; added new subsection designation "A.", and added new Subsections B through D.

The 1993 amendment, effective June 18, 1993, inserted "or" and deleted "and solicitor's license" following "manager's license".

61-18A-8. Applications; required information.

A. The application for a collection agency license shall state, among other things that may be required, the name of the applicant together with the name under which the applicant will do business and the location by street number and city in this state of the office of the business for which the license is sought.

B. The application shall state:

- (1) in the case of an individual, the full residence address of the applicant;
- (2) in the case of a partnership, the true names and complete residence addresses of all partners;
- (3) in the case of a corporation, the true names and complete residence addresses of all directors and officers and the true names and residence addresses of all holders of ten percent or more of the corporation's outstanding stock and other securities and the number of shares or units of each and of all classes held by each and the total number of shares or units of each class issued and outstanding; and
- (4) in the case of a nonstock corporation or an unincorporated association, the true names and complete residence addresses of all officers, directors and trustees.

C. The application shall state the name of the licensed manager who will be actively in charge of the collection agency for which the license is sought.

D. The director may establish, by rule, regulation or order, requirements for a license application as necessary, including:

- (1) background checks for criminal history through fingerprint or other databases;
- (2) civil or administrative records;
- (3) credit history; and
- (4) other information as deemed relevant and necessary by the director.

History: Laws 1987, ch. 252, § 8; 2019, ch. 144, § 28.

The 2019 amendment, effective July 1, 2019, authorized the director of the financial institutions division of the regulation and licensing department to establish certain requirements for a license application, and made

certain technical amendments; added new subsection designations "B." and "C."; in Subsection B, added new paragraph designations "(1)" through "(4)"; and added new Subsection D.

61-18A-9. Financial statement.

The application for a collection agency license shall be accompanied by a financial statement of the applicant up to not more than sixty days prior to date of application for a new license or renewal, showing the assets and liabilities of the applicant and truly reflecting that that applicant's net worth is not less than the sum of ten thousand dollars (\$10,000), and that its liquid assets are not less than one thousand dollars (\$1,000) available for use in licensee's business. The financial statement shall be sworn to by the applicant, if the applicant is an individual or by a partner, director, manager or trustee in its behalf, if the applicant is a partnership, corporation or unincorporated association. The information contained in the financial statement shall be confidential and not a public record.

History: Laws 1987, ch. 252, § 9.

61-18A-10. Manager's license and examination.

A. An applicant for a manager's license shall be examined concerning his competency, experience and knowledge of law and regulations by the director and on such pertinent subjects as the director shall require.

B. Examinations shall be practical in character and of such length, scope and character as the director deems necessary to determine the fitness of applicants to engage in the general collection agency business. Both questions and answers shall be in the English language.

C. The director shall prepare or cause to be prepared all examination material. The number and character of the questions, examination procedure, method of grading and the passing grade to be attained by successful applicants shall be determined by the director.

D. The examination papers of any person shall be kept for a period of one year and may then be destroyed. The examination papers shall be open to inspection during the one-year period only by the director, the staff of the financial institutions division of the regulation and licensing department and by the applicant or by someone appointed by the latter to inspect them, or by

a court of competent jurisdiction in a proceeding where the contents of the papers are properly involved.

History: Laws 1987, ch. 252, § 10.

61-18A-11. Qualification of manager applicants.

The licensed manager to be actively in charge of a collection agency shall:

- A. have reached the age of majority;
- B. not have been convicted of a felony or crime involving moral turpitude;
- C. be a graduate of a high school or provide proof to the director that the licensed manager is possessed of the equivalent of a high school education;
- D. pass the examination required;
- E. pay the examination fee to the director;
- F. have been actively and continuously engaged or employed in the collection of accounts receivable for at least two of the five years next preceding the filing of the application; and
- G. have a good credit record.

History: Laws 1987, ch. 252, § 11; 1999, ch. 272, § 30; 2021, ch. 70, § 10.

The 2021 amendment, effective June 18, 2021, removed United States citizenship as a qualification for a licensed manager of a collection agency; and deleted former Subsection A and redesignated the succeeding subsections accordingly.

The 1999 amendment, effective June 18, 1999, deleted former Subsection D, which read "have been a bona fide resident of this state continuously for at least six months prior to the date of the filing of the application", and redesignated the subsequent subsections accordingly.

61-18A-12. Approval of applications.

No application for license shall be approved by the director unless the applicant has met all requirements of the Collection Agency Regulatory Act [61-18A-1 NMSA 1978] and any rules and regulations established thereunder. When said requirements have been met, the director shall grant and issue a license in the form provided by the Collection Agency Regulatory Act.

History: Laws 1987, ch. 252, § 12.

61-18A-13. Denial of applications.

The director may deny any license:

- A. if the applicant has ever had a license or its equivalent revoked;
- B. if the applicant is or was a partner, officer, director, trustee, manager or stockholder of any partnership, corporation or unincorporated association the license of which has been revoked;
- C. if the applicant or a partner, officer, director, trustee, stockholder or employee of the applicant has been convicted of a felony or any crime involving moral turpitude; or
- D. if the applicant has violated any provision of the Collection Agency Regulatory Act [61-18A-1 NMSA 1978] or rules and regulations established thereunder.

History: Laws 1987, ch. 252, § 13.

61-18A-14. License to foreign corporation or partnership.

No collection agency license shall be issued to any foreign corporation or partnership unless it has fully complied with the laws of the state of New Mexico so as to entitle it to do business in the state; provided that the foreign corporation or partnership shall establish and maintain a collection agency in New Mexico at all times during the life of any collection agency license issued to the foreign corporation or partnership. All records of the collection agency located in New Mexico

shall be maintained at the collection agency's principal office in New Mexico unless the collection agency records are maintained electronically, in which case, electronic records may be maintained at a location where the collection agency regularly maintains records.

History: Laws 1987, ch. 252, § 14; 2012, ch. 11, § 1.

The 2012 amendment, effective July 1, 2012, permitted a foreign collection agency to maintain electronic records at a location where the collection agency regularly maintains records; in the first sentence, after "establish and maintain a", deleted "full time bona fide", after "during the life of any", added "collection agency", and after

"license issued to", deleted "it" and added "the foreign corporation or partnership"; and in the second sentence, after "All records of the collection agency", added "located in New Mexico shall", after "maintained at the", added "collection agency's", and after "principal office in New Mexico", deleted "of such agency" and added the remainder of the sentence.

61-18A-15. Surety bond.

A. Prior to the issuance of any collection agency or reposessor's license or renewal thereof a surety bond in the penal sum of five thousand dollars (\$5,000), which may by regulation or order of the director be increased, shall be filed with the division. The bond shall run to the people of the state of New Mexico, shall be executed and acknowledged by the applicant as principal and by a corporation which is licensed by the superintendent of insurance of this state to transact the business of fidelity and surety insurance, as surety.

B. The surety bond shall provide for suit thereon by any person who has a cause of action under the Collection Agency Regulatory Act [61-18A-1 NMSA 1978] or rules and regulations established thereunder.

C. No action shall be brought upon any bond after the expiration of three years from the date of the occurrence of the act upon which a claim is based.

D. The bond shall be continuous in form and remain in full force and effect concurrently with the license and any renewals thereof unless terminated or canceled by action of the surety as provided in the Collection Agency Regulatory Act.

E. Upon the filing of thirty days' written notice with the director by any surety company of its withdrawal as the surety of any licensee, the director shall forthwith give notice to the licensee of the withdrawal which notice shall be by certified mail with request for return receipt and shall be addressed to the licensee at its main office in New Mexico as shown by the records of the director. The license of any licensee shall be void upon the termination of the bond by the surety company unless, prior to termination, a new bond has been filed with the division.

F. Should the license of any company to transact fidelity and surety insurance business in this state be canceled, revoked or otherwise terminated, all collection agency bonds for which such surety company is surety are thereupon and thereby canceled. Upon such cancellation, the license of any licensee having such a bond posted is suspended and shall remain suspended until a new and valid bond is filed, provided however that failure of any such licensee to file a new bond within thirty days after being advised by the director in writing of the necessity of doing so shall ipso facto revoke the license.

History: Laws 1987, ch. 252, § 15.

61-18A-16. Information to be included in collection agency license.

The license when issued shall state:

A. that it is issued pursuant to the Collection Agency Regulatory Act [61-18A-1 NMSA 1978] and the rules and regulations established thereunder and that the licensee is duly authorized to conduct business under the Collection Agency Regulatory Act;

B. the names of the owners of the licensee, if a sole proprietorship or partnership; and if a corporation, the name shall be followed by the words "a corporation";

C. the name under which the licensee is to operate;

D. the location by street number, city, county and state where the licensee is to conduct business; and

E. the number and the date of the license.

History: Laws 1987, ch. 252, § 16.

61-18A-17. Right granted by license.

Upon receipt of the license, the licensee has the right to conduct the business of a collection agency, reposessor, manager or solicitor with all the powers and privileges applicable thereto, contained in but subject always to all the provisions of the Collection Agency Regulatory Act [61-18A-1 NMSA 1978] and any rules and regulations established thereunder.

History: Laws 1987, ch. 252, § 17.

61-18A-18. Repealed.

Repeals. — Laws 2019, ch. 144, § 31 repealed 61-18A-18 NMSA 1978, as enacted by Laws 1987, ch. 252, § 18, relating to display of license, duration, effective July 1, 2019.

For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

61-18A-19. Change of location; ownership or name; duplicate license.

A. Upon any change of street address from that stated in the collection agency or reposessor license or any change of the business name therein shown, the licensee shall, within five days thereafter, deposit the license and written notification of the change of address or name, together with the duplicate license fee with the director.

The director shall thereupon enter the change in his records, retain and file the surrendered license and issue to the licensee a duplicate license setting forth the new name or address, or both, but bearing the same date and number as the surrendered license.

If the license is not deposited with the director within the time prescribed, then upon the lapse of the five-day period the license shall be and remain suspended until so deposited.

B. Upon any change of ownership of a licensee, if a sole proprietorship or partnership, or upon any change of ownership of more than fifty percent of the shares or voting rights, if a corporation, all licenses issued to a licensee are void unless, prior to such change of ownership, the prospective new owners have notified the director of the proposed acquisition have satisfied the director that they qualify to be licensed pursuant to the Collection Agency Regulatory Act [61-18A-1 NMSA 1978].

C. Every licensed corporation and unincorporated association shall promptly file with the director a written report of any transfer, issuance, cancellation or redemption of stock voting rights or membership amounting to ten percent or more of the total voting stock or memberships then outstanding.

History: Laws 1987, ch. 252, § 19.

61-18A-20. Temporary license.

For the purpose of winding up the affairs and discontinuance or sale of the business of a licensee, in the event of death of the licensed manager or dissolution of a partnership, the director shall, upon proper application, issue a temporary license to the personal representative or, to the nominee of the personal representative of the deceased or to a surviving partner in the case of the dissolution of a partnership. The application shall be in writing, subscribed and sworn to by the person to whom the temporary license is to be issued. The application shall be accompanied by the temporary license fee specified in the Collection Agency Regulatory Act [61-18A-1 NMSA 1978]. A temporary license shall be effective for a period of one year and shall not thereafter be renewed or continued.

History: Laws 1987, ch. 252, § 20.

61-18A-21. Branch office.

Application for a license for a branch office or offices may be made by any licensee. The application shall state the location and address of the branch office and the name and address of the

person to be actively in charge. The application shall be accompanied by a rider or endorsement to the licensee's surety bond increasing the penal sum of the bond by five thousand dollars (\$5,000) and a license fee in the same amount as required for the principal office.

History: Laws 1987, ch. 252, § 21.

61-18A-22. Office management; license.

A. Every licensed office of a collection agency, whether a principal or branch office, shall be under the active charge of a licensed manager. Each manager's license shall be issued by the director upon qualification by the applicant and shall be renewed annually upon application accompanied by the manager's renewal license fee, which application is to be filed with the division on or before November 30 of each year. Unless so renewed, each manager's license shall expire on January 1 unless previously revoked or canceled.

B. As used in this section, "under the active charge of a licensed manager" means that a licensed manager shall be physically present at the licensee's office at least seventy-five percent of the time during which the office is open for business.

History: Laws 1987, ch. 252, § 22; 2019, ch. 144, § 29.

The 2019 amendment, effective July 1, 2019, revised the deadline for renewing an office management license, and changed the expiration month for an office management license that is not renewed by the deadline; in

Subsection A, after "on or before", deleted "May 31" and added "November 30", and after "shall expire", deleted "June 30" and added "January 1"; and in Subsection B, after "licensed manager", deleted "must" and added "shall".

61-18A-23. Loss of qualified person.

Whenever a licensed manager ceases to be in charge of an office, the licensee shall notify the director in writing within ten days from such cessation.

If the notice is given, the collection agency license shall remain in force for a reasonable period to be determined by the rules and regulations. If the licensee fails to give the notice as required at the end of the ten-day period the collection agency license shall be ipso facto suspended, but the license shall be reinstated upon the filing of an affidavit by the licensee to the effect that the person formerly in charge of the office has been replaced by a licensed manager.

History: Laws 1987, ch. 252, § 23.

61-18A-24. Repealed.

Repeals. — Laws 1998, ch. 55, § 94 repeals 61-18A-24 NMSA 1978 as enacted by Laws 1987, ch. 252, § 24, relating to proceedings in connection with issuance, renewal,

suspension, denial or revocation, effective September 1, 1998. For former provisions, see 1993 Replacement Pamphlet.

61-18A-25. Unauthorized practice as collection agency.

No person, who is not a duly licensed and qualified collection agency, shall print, publish or otherwise prepare for distribution any system of collection letters, demand forms or other printed matter upon his stationery or upon stationery upon which the said person's name appears in such a manner as to indicate that a demand is being made by such person for the payment of any sums due or asserted to be due, where such forms containing such message are to be sold or furnished to anyone by such other person at any address different from the address of the person issuing such system of collection letters, demand forms or other printed material.

History: Laws 1987, ch. 252, § 25.

61-18A-26. Assignments; right to sue.

Nothing in the Collection Agency Regulatory Act shall be construed to prevent collection agencies from taking assignments of claims in their own name as real parties in interest for the purpose

of billing and collection and bringing suit in their own names; provided that no suit allowed by this section may be instituted on behalf of a collection agency in a court unless the collection agency appears by a duly authorized and licensed attorney-at-law.

History: Laws 1987, ch. 252, § 26; 2021, ch. 31, § 13.

The 2021 amendment, effective July 1, 2021, removed a provision authorizing a court, in its discretion, to order payment of attorney fees and costs to the prevailing party in certain debt collection lawsuits; and deleted "In such a suit, the court may, in its discretion, authorize payment of reasonable attorney fees and costs to the prevailing party".

ANNOTATIONS

Pro forma assignments. — This section does not authorize the practice of taking the assignment of debts from

an underlying creditor on a contingency fee basis and the filing of a suit by the collection agency's own attorneys in the collection agency's own name. *Kolker v. Duke City Collection Agency*, 750 F. Supp. 468 (D.N.M. 1990).

Practice of law not authorized. — This section cannot authorize collection agencies to practice law by bringing suits on nominally assigned claims in state court, since the regulation of the practice of law is an exclusive prerogative of the New Mexico Supreme Court. *Martinez v. Albuquerque Collection Servs., Inc.*, 867 F. Supp. 1495 (D.N.M. 1994).

61-18A-27. Renewal of license; fee.

A. A licensee desiring renewal of the licensee's license shall, on or before November 30 of each year, file with the director an application for renewal on forms as may be designated by the director. The application shall be accompanied by the renewal fee.

B. The director shall issue a renewal license that shall be dated January 1 next ensuing and shall bear the date to and including which the license is renewed.

History: Laws 1987, ch. 252, § 27; 2019, ch. 144, § 30.

The 2019 amendment, effective July 1, 2019, revised the deadline for renewing a license required by the Collection Agency Regulatory Act, and provided that renewed licenses shall be dated "January 1"; added new subsection

designations "A." and "B."; in Subsection A, after "on or before", deleted "May 31" and added "November 30"; and in Subsection B, after "dated", deleted "July 1" and added "January 1".

61-18A-28. Remittance of collections to clients.

All collection agencies shall remit to their clients the proceeds of all collections, after deducting their commission, other lawful expenses and any amounts collected pursuant to Section 61-18A-28.1 NMSA 1978, within forty days of such collection unless otherwise provided by regulation.

History: Laws 1987, ch. 252, § 28; 1992, ch. 36, § 1.

The 1992 amendment, effective May 20, 1992, substituted "shall remit" for "must remit", inserted "and any

amounts collected pursuant to Section 61-18A-28.1 NMSA 1978", and made a stylistic change.

61-18A-28.1. Additional collection from debtors.

A. Unless the agreement between the debtor and the creditor or the agreement between the collection agency and the creditor otherwise expressly prohibits, a collection agency may collect from the debtor an amount equal to the gross receipts tax and the local option gross receipts taxes, as those terms are defined in the Gross Receipts and Compensating Tax Act [7-9-1 NMSA 1978], imposed on the receipts of the collection agency that result from the collection of a debt from the debtor.

B. For purposes of this section, a collection agency does not mean a person who collects his own debts using a name other than his own which would indicate that a third person is collecting or attempting to collect such debts.

History: 1978 Comp., § 61-18A-28.1, enacted by Laws 1992, ch. 36, § 2.

ANNOTATIONS

Levy of additional tax not authorized. — This section does not authorize collection agencies to levy an

additional gross receipts tax on the commission portion of the referred debt if the creditor has already assessed a gross receipts tax on the entire balance. *Martinez v. Albuquerque Collection Servs., Inc.*, 867 F. Supp. 1495 (D.N.M. 1994).

61-18A-29. Repealed.

Repeals. — Laws 1993, ch. 213, § 4 repeals former 61-18A-29 NMSA 1978, as enacted by Laws 1987, ch. 252, § 29, concerning the issuance of a solicitor's license, effective

June 18, 1993. For provisions of former section, see 1992 Cumulative Supplement.

61-18A-30. Fees.

Except as provided in Section 61-1-34 NMSA 1978, the director shall charge and collect the following fees:

- A. an original license fee for a collection agency or branch thereof, of five hundred dollars (\$500);
- B. a renewal fee for a collection agency or branch thereof, of three hundred dollars (\$300);
- C. a duplicate license fee of fifteen dollars (\$15.00);
- D. a temporary license fee of thirty-five dollars (\$35.00);
- E. a delinquency fee of ten dollars (\$10.00) per day for each day of delinquency in filing applications for renewals;
- F. a manager's license examination fee of one hundred dollars (\$100);
- G. a manager's license renewal fee of fifty dollars (\$50.00);
- H. a fee of five dollars (\$5.00) for each copy of any issue or edition of the Collection Agency Regulatory Act and rules and regulations;
- I. a fee of five dollars (\$5.00) for each list of licensees in good standing;
- J. a fee of two hundred dollars (\$200) per day or fraction thereof for each examiner of the division engaged in an examination or investigation of a licensee, not to exceed five examiner-days per calendar year. If the examination or investigation is an out-of-state examination or investigation, the licensee shall reimburse the division the actual travel costs incurred to perform the examination or investigation; and
- K. an original license fee or renewal license fee for a reposessor of two hundred fifty dollars (\$250).

History: Laws 1987, ch. 252, § 30; 1993, ch. 213, § 3; 2020, ch. 6, § 47.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 1993 amendment, effective June 18, 1993, substituted "five hundred dollars (\$500)" for "two hundred dollars (\$200)" in Subsection A, "three hundred dollars

(\$300)" for "two hundred dollars (\$200)" in Subsection B, "one hundred dollars (\$100)" for "fifty dollars (\$50.00)" in Subsection F, and "fifty dollars (\$50.00)" for "thirty-five dollars (\$35.00)" in Subsection G; deleted former Subsections J and K, providing for a solicitor's certificate fee of \$7.50, and a fee of \$100 for examination of a licensee's books, accounts, files and records; inserted present Subsection J; redesignated former Subsection L as present Subsection K; and substituted "two hundred fifty dollars (\$250)" for "one hundred fifty dollars (\$150)" in Subsection K.

61-18A-31. Deposit of money.

All money received under the Collection Agency Regulatory Act by the director shall be deposited in the general fund.

History: Laws 1987, ch. 252, § 31; 2022, ch. 39, § 85.

The 2022 amendment, effective May 18, 2022, required that all money received under the Collection Agency Regulatory Act by the director be deposited in the

general fund; in the section heading, deleted "in general fund"; and after "shall be deposited in the", deleted "office of the state treasurer" and added "general fund".

61-18A-32. Judicial review.

A person aggrieved by the decision of the director in the enforcement of the Collection Agency Regulatory Act [61-18A-1 NMSA 1978] may obtain judicial review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1987, ch. 252, § 32; 1998, ch. 55, § 76; 1999, ch. 265, § 77.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

61-18A-33. Grandfather clause.

Any person properly licensed pursuant to the Collection Agency Act [61-18A-1 NMSA 1978] on the effective date of the enactment of the Collection Agency Regulatory Act is eligible to be granted a license under the provisions of the Collection Agency Regulatory Act.

History: Laws 1987, ch. 252, § 33.

means July 1, 1987, the effective date of Laws 1987, ch. 252.

Compiler's notes. — The phrase "effective date of the enactment of the Collection Agency Regulatory Act"

ARTICLE 19**Cosmetology (Repealed.)**

(Repealed by Laws 1979, ch. 382, § 35.)

61-19-1 to 61-19-47. Repealed.

Repeals. — Laws 1979, ch. 382, § 35 repeals former 61-19-1 to 61-19-47 NMSA 1978, relating to the regulation

of cosmetology, effective April 6, 1979. For present comparable provisions, see Chapter 61, Article 17A NMSA 1978.

ARTICLE 19A**Cosmetology (Repealed.)**

(Repealed by Laws 1989, ch. 110, § 7; 1993, ch. 171, § 28.)

61-19A-1 to 61-19A-34. Repealed.

Repeals. — Laws 1993, ch. 171, § 28 repeals former 61-19A-1 to 61-19A-25 NMSA 1978, as enacted by Laws 1979, ch. 382, §§ 1 to 25 and amended by Laws 1982, ch. 106, §§ 1 to 4, Laws 1984, ch. 44, § 1, and Laws 1989, ch. 110, §§ 1 to 4, regulating cosmetology, effective June 18, 1993. For provisions of former sections, see 1987 Replacement Pamphlet and 1992 Cumulative Supplement. For present comparable provisions, see Chapter 61, Article 17A NMSA 1978.

Laws 1989, ch. 110, § 7 repeals former 61-19A-26 NMSA 1978, as enacted by Laws 1979, ch. 382, § 26, relating to reissue of authority after revocation, effective June 26,

1989. For provisions of former section, see 1987 Replacement Pamphlet.

Laws 1993, ch. 171, § 28 repeals former 61-19A-27 to 61-19A-34 NMSA 1978, as enacted by Laws 1979, ch. 382, §§ 27 to 34, and amended by Laws 1989, ch. 110, §§ 5 and 6, concerning exemptions; prohibited acts; sanitary rules; investigations; entry and inspection; remedies; confidentiality; and repeal of the article, effective June 18, 1993. For provisions of former sections, see 1987 Replacement Pamphlet and 1992 Cumulative Supplement. For present comparable provisions, see Chapter 61, Article 17A NMSA 1978.

ARTICLE 20**Dry Cleaning Industry (Repealed.)**

(Repealed by Laws 1981, ch. 241, § 35.)

61-20-1 to 61-20-14. Repealed.

Repeals. — Laws 1981, ch. 241, § 35, repeals former 61-20-1 to 61-20-14 NMSA 1978, relating to the regulation of the dry cleaning industry, effective April 8, 1981.

ARTICLE 21

Embalmers and Funeral Directors (Repealed.)

(Repealed by Laws 1978, ch. 185, § 26.)

61-21-1 to 61-21-37. Repealed.

Repeals. — Laws 1978, ch. 185, § 26, repeals former 61-20-1 to 61-20-33, 1953 Comp. (61-21-1 to 61-21-37 NMSA 1978), relating to embalmers and funeral directors,

effective July 1, 1978. For provisions of the Thanatopractice Act, see 61-32-1 NMSA 1978 et seq.

ARTICLE 22

Employment Agencies (Repealed.)

(Repealed by Laws 1981, ch. 241, § 35.)

61-22-1 to 61-22-16. Repealed.

Repeals. — Laws 1981, ch. 241, § 35, repeals former 61-22-1 to 61-22-16 NMSA 1978, relating to the regulation of employment agencies, effective April 8, 1981.

ARTICLE 23

Engineering and Surveying

Sec.

- 61-23-1. Short title. (Repealed effective July 1, 2024.)
- 61-23-1.1. Repealed.
- 61-23-2. Declaration of policy. (Repealed effective July 1, 2024.)
- 61-23-3. Definitions. (Repealed effective July 1, 2024.)
- 61-23-4. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)
- 61-23-5. State board of licensure for professional engineers and professional surveyors; members; terms. (Repealed effective July 1, 2024.)
- 61-23-6. Board members; qualifications. (Repealed effective July 1, 2024.)
- 61-23-7. Reimbursement of board members. (Repealed effective July 1, 2024.)
- 61-23-8. Removal of members of board. (Repealed effective July 1, 2024.)
- 61-23-9. Board; organization; meetings. (Repealed effective July 1, 2024.)
- 61-23-10. Duties and powers of the board. (Repealed effective July 1, 2024.)
- 61-23-11. Receipts and disbursement; fund created. (Repealed effective July 1, 2024.)
- 61-23-12. Records and reports. (Repealed effective July 1, 2024.)
- 61-23-13. Roster of licensed professional engineers and professional surveyors. (Repealed effective July 1, 2024.)
- 61-23-13.1. Repealed.
- 61-23-14. Certification as an engineer intern; requirements. (Repealed effective July 1, 2024.)

Sec.

- 61-23-14.1. Licensure as a professional engineer; requirements. (Repealed effective July 1, 2024.)
- 61-23-15, 61-23-16. Repealed.
- 61-23-17. Application and examination fees. (Repealed effective July 1, 2024.)
- 61-23-17.1. Repealed.
- 61-23-18. Engineering; examinations. (Repealed effective July 1, 2024.)
- 61-23-19. Engineering; licenses; seals; incidental architectural work; supplemental surveying work. (Repealed effective July 1, 2024.)
- 61-23-20. Engineering; licensure and renewal fees; expirations. (Repealed effective July 1, 2024.)
- 61-23-21. Practice of engineering. (Repealed effective July 1, 2024.)
- 61-23-22. Engineering; exemptions. (Repealed effective July 1, 2024.)
- 61-23-23. Repealed.
- 61-23-23.1. Authority to investigate; civil penalties for unlicensed persons; engineering. (Repealed effective July 1, 2024.)
- 61-23-24. Engineering; violations; disciplinary action; penalties; reissuance of licenses. (Repealed effective July 1, 2024.)
- 61-23-24.1. Engineering; professional development. (Repealed effective July 1, 2024.)
- 61-23-25. Repealed.
- 61-23-26. Engineering; public work. (Repealed effective July 1, 2024.)

Sec. 61-23-27. Engineering; public officer; licensure required. (Repealed effective July 1, 2024.)

61-23-27.1, 61-23-27.2. Repealed.

61-23-27.3. Certification of surveyor intern; requirements. (Repealed effective July 1, 2024.)

61-23-27.4. Licensure as a professional surveyor; general requirements. (Repealed effective July 1, 2024.)

61-23-27.5. Surveying; application and examination fees. (Repealed effective July 1, 2024.)

61-23-27.6. Surveying; examinations. (Repealed effective July 1, 2024.)

61-23-27.7. Surveying; licensure and renewal fees; expirations. (Repealed effective July 1, 2024.)

61-23-27.8. Surveying licenses and seals. (Repealed effective July 1, 2024.)

61-23-27.9. Surveying; practice of surveying; mandatory disclosure. (Repealed effective July 1, 2024.)

61-23-27.10. Surveying exemptions. (Repealed effective July 1, 2024.)

61-23-27.11. Surveying; violations; disciplinary actions; penalties; reissuance of licenses. (Repealed effective July 1, 2024.)

61-23-27.12. Surveying; professional development. (Repealed effective July 1, 2024.)

61-23-27.13. Surveying; public work. (Repealed effective July 1, 2024.)

61-23-27.14. Surveying; public officer; licensure required. (Repealed effective July 1, 2024.)

Sec. 61-23-27.15. Authority to investigate; civil penalties for unlicensed persons; surveying. (Repealed effective July 1, 2024.)

61-23-28. Reference marks; removal or obliteration; replacement. (Repealed effective July 1, 2024.)

61-23-28.1. Repealed.

61-23-28.2. Surveying; record of survey. (Repealed effective July 1, 2024.)

61-23-29. Repealed.

61-23-29.1. Repealed.

61-23-30. Right of entry on public and private property; responsibility. (Repealed effective July 1, 2024.)

61-23-31. Licensure under prior laws. (Repealed effective July 1, 2024.)

61-23-31.1. Good samaritan. (Repealed effective July 1, 2024.)

61-23-32. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

61-23-33. Notice of boundary survey; certain land grants. (Repealed effective July 1, 2024.)

61-23-34. Repealed.

61-23-35. Engineering and surveying scholarship program. (Repealed effective July 1, 2024.)

61-23-36. Engineering and surveying scholarship fund created. (Repealed effective July 1, 2024.)

61-23-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 23 NMSA 1978 may be cited as the "Engineering and Surveying Practice Act".

History: Laws 1987, ch. 336, § 1; 1993, ch. 218, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336, repealed former 61-23-1 NMSA 1978, as amended by Laws 1947, ch. 110, § 2, relating to replacement of reference marks which have been removed or obliterated, effective June 19, 1987, and enacted a new section.

The 1993 amendment, effective July 1, 1993, substituted "Chapter 61, Article 23 NMSA 1978" for "Sections 1 through 32 of this act".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 69 to 75. 53 C.J.S. Licenses §§ 5, 7, 34 to 40, 50 to 63.

61-23-1.1. Repealed.

Repeals. — Laws 1987, ch. 336, § 34 repealed former 61-23-1.1 NMSA 1978, as enacted by Laws 1979, ch. 156,

§ 4, relating to standards and procedures for restoration or reestablishment of monuments, effective June 19, 1987.

61-23-2. Declaration of policy. (Repealed effective July 1, 2024.)

The legislature declares that it is a matter of public safety, interest and concern that the practices of engineering and surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practices of engineering and surveying. In order to safeguard life, health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or surveying shall be required to submit evidence that the person is qualified to so practice and shall be licensed as provided in the Engineering and Surveying Practice Act. It is unlawful for any person to practice, offer to practice, engage in the business, act in the capacity of, advertise or use in connection with the person's name or otherwise assume, use or advertise any title or description tending to convey the impression that the person is a professional, licensed engineer or surveyor unless that person is licensed

or exempt under the provisions of the Engineering and Surveying Practice Act. A person who engages in the business or acts in the capacity of an engineer or surveyor in New Mexico, except as otherwise provided in Sections 61-23-22 and 61-23-27.10 NMSA 1978, with or without a New Mexico license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 23 NMSA 1978. The practice of engineering or surveying shall be deemed a privilege granted by the board based on the qualifications of the individual as evidenced by the licensee's certificate, which shall not be transferable.

History: Laws 1987, ch. 336, § 2; 1993, ch. 218, § 2; 1999, ch. 259, § 1; 2003, ch. 233, § 1; 2017, ch. 42, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-2 NMSA 1978, as amended by Laws 1947, ch. 110, § 3, relating to right of entry on public and private property, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, made technical revisions; replaced each occurrence of "he" or "his" with "the person" or "the person's" throughout the section, and in the fourth sentence, after "capacity of", deleted "a professional engineer or professional" and added "an engineer or".

The 2003 amendment, effective June 20, 2003, substituted "engage in the business, act in the capacity of, advertise" for "in New Mexico" in the third sentence; and added the fourth sentence pertaining to professional engineers or surveyors.

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" and made similar changes throughout the section, and substituted "by the board" for "by the state board of registration for professional engineers and surveyors" in the last sentence.

The 1993 amendment, effective July 1, 1993, substituted "professional, licensed or registered engineer" for "professional engineer, engineer, professional surveyor" and deleted "which shall be construed in accordance with

this declaration of policy" at the end of the third sentence, and added the final sentence.

ANNOTATIONS

Broad interpretation of licensing act violated freedom of speech. — Where respondent, who was a hydrologist and a member of the board of directors of a conservancy district, investigated the use of demolition and construction waste as rip-rap in ditches and prepared and presented a report to the board of directors criticizing the conservancy district's use of the rip-rap to prevent erosion; respondent used a civil engineering mathematical formula to compare the conveyance capacity of ditches that had rip-rap with ditches that had sandy bottoms and asserted that the rip-rap reduced conveyance capacity, led to flooding and bank erosion that could lead to failure; respondent criticized the district's engineer who directed the use of the rip-rap; respondent reiterated multiple times that respondent was not an engineer and insisted that the district hire a registered engineer to review respondent's report and to address the issue; and petitioner determined that respondent had practiced engineering without a license, because respondent had applied engineering principles, equations and concepts to investigate and evaluate the flow of water in the district's ditches, the petitioner's broad interpretation and application of Section 61-23-23 NMSA 1978 violated respondent's right to freedom of speech. *New Mexico Bd. of Licensure v. Turner*, 2013-NMCA-067, 303 P.3d 875.

61-23-3. Definitions. (Repealed effective July 1, 2024.)

As used in the Engineering and Surveying Practice Act:

- A. "approved" or "approval" means acceptable to the board;
- B. "authorized company officer" means an employee of a business entity duly authorized by the business entity to contractually obligate the business entity;
- C. "board" means the state board of licensure for professional engineers and professional surveyors;
- D. "business entity" means a corporation, professional corporation, limited liability corporation, professional limited liability corporation, general partnership, limited partnership, limited liability partnership, professional limited liability partnership, a joint stock association or any other form of business, whether or not for profit;
- E. "conviction" or "convicted" means a final adjudication of guilt, whether pursuant to a plea of nolo contendere or otherwise and whether or not the sentence is deferred or suspended;
- F. "engineer", "professional engineer", "consulting engineer", "licensed engineer" or "registered engineer" means a person who is qualified to practice engineering by reason of the person's intensive preparation and knowledge in the use of mathematics, chemistry, physics and engineering sciences, including the principles and methods of engineering analysis and design acquired by professional education and engineering experience and who is licensed by the board to practice engineering;
- G. "engineering accreditation commission" means the engineering accreditation commission of the accreditation board for engineering and technology, incorporated, or any successor commission or organization;

H. "engineering", "practice of engineering" or "engineering practice" means any creative or engineering work that requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering work. The "practice of engineering" may include the use of photogrammetric methods to derive topographical and other data. The "practice of engineering" does not include responsibility for the supervision of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place;

I. "engineering committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of engineering, including the promulgation and adoption of rules of professional responsibility for professional engineers exclusive to the practice of engineering;

J. "engineer intern" means a person who has qualified for, taken and passed an examination in the fundamental engineering subjects as provided in the Engineering and Surveying Practice Act;

K. "fund" means the professional engineers' and surveyors' fund;

L. "incidental practice" means the performance of other professional services that are related to a licensee's work as an engineer;

M. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or a legal or commercial entity;

N. "professional development" means education by a licensee in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge to maintain licensure;

O. "responsible charge" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a licensee in that profession, and by sealing or signing the documents, the professional engineer or professional surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable engineering or surveying standards have been met;

P. "surveying", "practice of surveying" or "surveying practice" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

(1) the measuring and locating of lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volumes;

(2) the monumenting of property boundaries and for the platting and layout of lands and subdivisions;

(3) the application of photogrammetric methods used to derive topographic and other data;

(4) the establishment of horizontal and vertical controls that will be the basis for all geospatial data used for future design surveys, including construction staking surveys, surveys to lay out horizontal and vertical alignments, topographic surveys, control surveys for aerial photography for the collection of topographic and planimetric data using photogrammetric methods and construction surveys of engineering and architectural public works projects;

(5) the preparation and perpetuation of maps, records, plats, field notes, easements and property descriptions; and

(6) the depiction and transmittal by paper or digital means of any digital geospatial data for use in geographic information systems or land information systems that purports to be the authoritative location of points or features of a survey regulated by the Engineering and Surveying

Practice Act, but excludes data used solely for a cadastre, such as assessment and tax mapping purposes, or general representations of surveyed or historic data used for mapping purposes, such as land parcels and built infrastructure;

Q. "surveying committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of surveying, including the promulgation and adoption of rules of professional responsibility for professional surveyors exclusive to the practice of surveying;

R. "surveyor", "professional surveyor", "licensed surveyor" or "registered surveyor" means a person who is qualified to practice surveying by reason of the person's intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying, including the principles and methods of surveying acquired by education and experience, and who is licensed by the board to practice surveying;

S. "surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in the Engineering and Surveying Practice Act;

T. "surveying work" means the work performed in the practice of surveying; and

U. "supplemental surveying work" means surveying work performed in order to densify, augment and enhance previously performed survey work or site information but excludes the surveying of real property for the establishment of land boundaries, rights of way and easements and the dependent or independent surveys or resurveys of the public land system.

History: Laws 1987, ch. 336, § 3; 1993, ch. 218, § 3; 1999, ch. 259, § 2; 2003, ch. 233, § 2; 2005, ch. 69, § 1; 2012, ch. 46, § 1; 2017, ch. 42, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-3 NMSA 1978, as enacted by Laws 1933, ch. 130, § 3, relating to violation of reference mark and entry provisions, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, defined "authorized company officer", "business entity" and "engineering accreditation commission", and revised the definition of "engineer" as used in the Engineering and Surveying Practice Act; added a new Subsection B and redesignated former Subsection B as Subsection C; added a new Subsection D and redesignated former Subsections C and D as Subsections E and F, respectively; in Subsection F, after "engineer", added "professional engineer", "consulting engineer", "licensed engineer" or "registered engineer", and after "engineering experience", added "and who is licensed by the board to practice engineering"; added a new Subsection G and redesignated former Subsections E through K as Subsections H through N, respectively; deleted former Subsection L and redesignated former Subsections M through S as Subsections O through U, respectively; in Subsection P, Paragraph P(5), after "field notes", added "easements" and added Paragraph P(6); in Subsection R, after "surveyor", deleted "or", and after "professional surveyor", added "licensed surveyor" or "registered surveyor"; and in Subsection U, deleted the last three sentences, which related to supplemental surveying work for the planning and design of an engineering project.

The 2012 amendment, effective July 1, 2012, defined "professional development" as the education to maintain licensure and in Subsection K, after "relevant skills and knowledge", added "to maintain licensure".

The 2005 amendment, effective June 17, 2005, added the promulgation and adoption of rules of professional responsibility for professional engineers as a function of the engineering committee in Subsection F; changed the definition of "surveying" in Subsection N to include the establishment of controls that will be the basis for all geospatial data used for future design surveys; added the promulgation and adoption of rules of professional responsibility for professional surveyors as a function of the surveying committee in subsection, added a definition of "supplemental surveying work" in Subsection S and permitted professional engineers to perform supplemental surveys in certain circumstances.

The 2003 amendment, effective June 20, 2003, inserted Subsection J, and redesignated the remaining subsections accordingly.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration", "licensee" for "registrant", and made similar substitutions throughout the section; added the next-to last sentence in Subsection E; added Subsection H, and redesignated subsequent subsections accordingly; and in the undesignated paragraph at the end of the section, deleted the former last sentence, which read "A registered professional engineer may apply photogrammetric methods to derive topographic and other date", and added the last two sentences.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

61-23-4. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Engineering and Surveying Practice Act [this article].

History: Laws 1987, ch. 336, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-4 NMSA 1978, as amended by Laws 1979, ch. 363, § 1, relating to short title, effective June 19, 1987, and enacted a new section.

61-23-5. State board of licensure for professional engineers and professional surveyors; members; terms. (Repealed effective July 1, 2024.)

A. There is created the "state board of licensure for professional engineers and professional surveyors" that shall consist of five licensed professional engineers, at least one of whom shall be in engineering education, three licensed professional surveyors and two public members.

B. The members of the board shall be appointed by the governor for staggered terms of five years. The appointees shall have the qualifications required by Section 61-23-6 NMSA 1978. The appointments shall be made in such a manner that the terms of not more than two members expire in each year. Each member of the board shall receive a certificate of appointment from the governor. Before the beginning of the term of office, the appointee shall file with the secretary of state a written oath or affirmation for the faithful discharge of official duty. A member of the board may be reappointed but may not serve more than two consecutive full terms. A member shall not be reappointed to the board for at least two years after serving two consecutive full terms. The board may designate any former board member to assist it in an advisory capacity.

C. Each member may hold office until the expiration of the term for which appointed or until a successor has been duly qualified and appointed. In the event of a vacancy for any cause that results in an unexpired term, if not filled within three months by official action, the board may appoint a provisional member to serve until the governor acts. Vacancies on the board shall be filled by appointment by the governor for the balance of the unexpired term.

History: Laws 1987, ch. 336, § 5; 1993, ch. 218, § 4; 1999, ch. 259, § 3; 2005, ch. 69, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-5 NMSA 1978, as amended by Laws 1979, ch. 363, § 2, relating to declaration of policy, effective June 19, 1987, and enacted a new section.

The 2005 amendment, effective June 17, 2005, changes "surveyors" to "professional surveyors".

The 1999 amendment, effective June 18, 1999, in Subsection A, substituted "licensure" for "registration" and twice substituted "licensed" for "registered".

The 1993 amendment, effective July 1, 1993, in Subsection A, deleted "or surveying" following "engineering" and substituted "two public members" for "one public member"; in Subsection B, substituted "Section 61-23-6 NMSA 1978" for "Section 6 of the Engineering and Surveying Practice Act" in the second sentence, divided the former fourth sentence into the present fourth and fifth sentences by deleting "and", inserted "the appointee" in the fifth sentence, inserted "full" near the end of the sixth sentence, and added the final two sentences; and made minor stylistic changes in Subsections A and C.

61-23-6. Board members; qualifications. (Repealed effective July 1, 2024.)

A. Each engineer member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of engineering as a professional engineer for at least ten years, including responsible charge of engineering projects for at least five years as a professional engineer licensed in New Mexico, or engaged in engineering education for at least ten years, including responsible charge of engineering education for at least five years, and shall be a professional engineer licensed in New Mexico.

B. Each surveyor member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of surveying as a professional surveyor for at least ten years, including responsible charge of surveying projects for at least five years as a professional surveyor licensed in New Mexico.

C. Each public member shall be a citizen of the United States, a resident of New Mexico, shall not have been licensed nor be qualified for licensure as an engineer, surveyor, architect or

landscape architect and shall not have any significant financial interest, direct or indirect, in the professions regulated.

History: Laws 1987, ch. 336, § 6; 1993, ch. 218, § 5; 1999, ch. 259, § 4; 2005, ch. 69, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-6 NMSA 1978, as amended by Laws 1979, ch. 363, § 3, relating to definitions, effective June 19, 1987, and enacted a new section.

The 2005 amendment, effective June 17, 2005, requires that engineer members of the board have had responsible charge of engineering projects for at least five years as a professional engineer licensed in New Mexico and that surveyor members have had responsible charge of surveying projects for at least five years as a professional surveyor licensed in New Mexico.

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" and made similar changes throughout the section, and deleted "and at least thirty-five years of age" following "resident of New Mexico" in Subsection C.

The 1993 amendment, effective July 1, 1993, substituted "engineer" for "engineering" in the first sentence and inserted "or engaged in engineering education for at least ten years, including responsible charge of engineering education for at least five years" in the second sentence of Subsection A; inserted "architect or landscape architect" and substituted "professions" for "occupation" in Subsection C; and made minor stylistic changes throughout the section.

61-23-7. Reimbursement of board members. (Repealed effective July 1, 2024.)

Each member of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Law 1987, ch. 336, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-7 NMSA 1978, as enacted by Laws

1974, ch. 78, § 27, relating to criminal offender's character evaluation, effective June 19, 1987, and enacted a new section.

61-23-8. Removal of members of board. (Repealed effective July 1, 2024.)

The governor may remove, after notice and hearing, any member of the board for misconduct, incompetency, neglect of duty, malfeasance in office or for any reason prescribed by law for removal of state officials.

History: Laws 1987, ch. 336, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-8 NMSA 1978, as amended by Laws

1979, ch. 363, § 4, relating to state board of registration for professional engineers and land surveyors, effective June 19, 1987, and enacted a new section.

61-23-9. Board; organization; meetings. (Repealed effective July 1, 2024.)

A. There shall be an "engineering committee" composed of the five members of the board who serve as licensed professional engineers and one of the public members, who shall be appointed to the committee by the board. The engineering committee shall meet in conjunction with all board meetings. The bylaws or rules of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other board members may be substituted for a non-attending member in order to have a quorum. The committee shall elect a chair and vice chair from the committee members at the last committee meeting prior to July 1 of each year.

B. There shall be a "surveying committee" composed of the three members of the board who serve as licensed professional surveyors and one of the public members, who shall be appointed

to the committee by the board. The surveying committee shall meet in conjunction with all board meetings. The bylaws or rules of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other board members may serve on this committee. The committee shall elect a chair and vice chair from the committee members at the last committee meeting prior to July 1 of each year.

C. All matters that come before the board that pertain exclusively to engineering or exclusively to surveying shall be referred to the respective committee for disposition. The committee action on such matters shall be the action of the board. Committee actions shall be reported to the board.

D. There shall be a joint engineering and surveying standing committee of the board composed of two members from the professional engineering committee, the public member and the chair, and two members from the professional surveying committee, the public member and the chair. If the public member is currently the chair of either committee, the vice chair will serve as the professional member on the standing committee.

E. The board shall hold at least four regular meetings each year. At least one meeting shall be held at the state capitol. The bylaws or rules of the board shall provide procedures for giving notice of all meetings and for holding special meetings. The board shall elect annually a chair, a vice chair and a secretary, who shall be members of the board. A member of the board shall not be elected to the same office for more than two consecutive years. A quorum of the board shall be a majority of the board. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. The board shall have an official seal.

History: Laws 1987, ch. 336, § 9; 1993, ch. 218, § 6; 1999, ch. 259, § 5; 2005, ch. 69, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-9 NMSA 1978, as amended by Laws 1979, ch. 363, § 5, relating to qualifications of board members, and enacted a new section, effective June 19, 1987.

The 2005 amendment, effective June 17, 2005, provides that in the event of a lack of a quorum at a meeting of the engineering committee and at the request of the

committee, other board members may be substituted for a non-attending member in order to have a quorum, creating a joint engineering and surveying standing committee of the board.

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" in Subsections A and B, and substituted "bylaws or rules" for "bylaws or regulations" throughout the section.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

61-23-10. Duties and powers of the board. (Repealed effective July 1, 2024.)

A. The board shall administer the provisions of the Engineering and Surveying Practice Act and exercise the authority granted the board in that act. The board is the sole state agency with the power to certify the qualifications of professional engineers and professional surveyors. The board may engage such personnel, including an executive director, as it deems necessary.

B. The board may promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] that are reasonable for the proper performance of its duties and the regulation of its procedures, meeting records and examinations and the conduct of examinations. The board shall promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. All such rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

C. The professional engineering committee shall promulgate rules of professional responsibility exclusive to the practice of engineering. All such rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

D. The professional surveying committee shall promulgate rules of professional responsibility exclusive to the practice of surveying. All such rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

E. The joint engineering and surveying standing committee has exclusive authority over practice disputes between engineers and surveyors to determine if proposed rules of professional

responsibility are exclusive to the practice of engineering or exclusive to the practice of surveying so that rulemaking authority is delegated to the engineering committee or to the surveying committee. Determination of exclusive practice of engineering or surveying requires an affirmative vote by no less than three members of the joint committee. If an affirmative vote of three members cannot be achieved, the determination of exclusivity shall be made by the full board.

F. To effect the provisions of the Engineering and Surveying Practice Act, the board may, under the chair's hand and the board's seal, subpoena witnesses and compel the production of books, papers and documents in any disciplinary action conducted in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] against a licensee or a person practicing or offering to practice without licensure. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If a person refuses to obey a subpoena so issued or refuses to testify or produce any books, papers or documents, the board may apply to a court of competent jurisdiction for an order to compel the requisite action. If a person willfully fails to comply with such an order, that person may be held in contempt of court.

G. The board may apply for injunctive relief to enforce the provisions of the Engineering and Surveying Practice Act or to restrain any violation of that act. The members of the board shall not be personally liable under this proceeding.

H. The board may subject an applicant for licensure to such examinations as it deems necessary to determine the applicant's qualifications.

I. The board shall create enforcement advisory committees composed of licensees as necessary. Each committee shall include at least four licensees in the same category as the respondent. An engineering enforcement advisory committee shall have at least one licensee in the same branch as the respondent. Enforcement advisory committees shall provide technical assistance to the board and its staff. The board shall select members from a list of volunteers submitting their resumes and letters of interest.

J. No action or other legal proceedings for damages shall be instituted against the board, a board member or an agent, an employee or a member of an advisory committee of the board for any act done in good faith and in the intended performance of any power or duty granted pursuant to the Engineering and Surveying Practice Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

K. The board, in cooperation with the board of examiners for architects and the board of landscape architects, shall create a joint standing committee to be known as the "joint practice committee". In order to safeguard life, health and property and to promote the public welfare, the committee shall have as its purpose the promotion and development of the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of the committee and its powers and duties shall be in accordance with identical resolutions adopted by each board.

L. As used in the Engineering and Surveying Practice Act, "incidental practice" shall be defined by identical rules of the board and the board of examiners for architects.

History: Laws 1987, ch. 336, § 10; 1993, ch. 218, § 7; 1999, ch. 259, § 6; 2005, ch. 69, § 5; 2022, ch. 39, § 86.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-10 NMSA 1978, as amended by Laws 1963, ch. 43, § 25, relating to reimbursement of board members, effective June 19, 1987, and enacted a new section.

The 2022 amendment, effective May 18, 2022, clarified that the state board of licensure for professional engineers and professional surveyors is required to follow the provisions of the State Rules Act when promulgating rules and to follow the provisions of the Uniform Licensing Act in disciplinary matters; in Subsection B, after "The board", deleted "shall have the power to adopt and amend all bylaws and" and added "may promulgate", after "rules", deleted "of procedure consistent with the constitution and the laws of this state" and added "in accordance with the State Rules Act"; and in Subsection F, after "in

any disciplinary action", added "conducted in accordance with the Uniform Licensing Act".

The 2005 amendment, effective June 17, 2005, provides that the board is the sole authority to certify the qualifications of professional engineers and professional surveyors' authorizes the professional engineering committee and the professional surveying committee to adopt and promulgate rules of professional responsibility exclusive to engineering and surveying respectively, and provides that the joint engineering and surveying standing committee has exclusive authority over practice disputes between engineer and surveyors to determine to determine if proposed rules of professional responsibility are exclusive to one practice or the other in order to delegate rule making authority to the proper committee.

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" and made similar changes throughout the section; added Subsection F, and redesignated subsequent subsections accordingly; substituted

"board member or an agent, and employee or a member of an advisory committee" for "board member or employee" in Subsection G; and deleted "of registration for professional engineers and surveyors" following "regulations of the board" in Subsection I.

The 1993 amendment, effective July 1, 1993, added the second sentence of Subsection A; deleted "or the Engineering and Surveying Practice Act" following "laws of

this state" in the first sentence of Subsection B; substituted "examiners for architects" for "architectural examiners" and "joint practice committee" for "architect-engineer-landscape architect joint practice committee", to resolve disputes concerning these professions" in the first sentence and added the second sentence of Subsection G; added Subsection H; and made minor stylistic changes throughout the section.

61-23-11. Receipts and disbursement; fund created. (Repealed effective July 1, 2024.)

A. The "professional engineers' and surveyors' fund" is created in the state treasury. The executive director of the board shall receive and account for all money received under the provisions of the Engineering and Surveying Practice Act and shall pay that money to the state treasurer for deposit in the fund. Money in this fund shall be paid out only by warrant of the secretary of finance and administration upon the state treasurer, upon itemized vouchers approved by the chair and attested by the executive director of the board. All money in the fund is appropriated for the use of the board. Earnings from investment of the fund shall accrue to the credit of the fund.

B. The executive director of the board shall give a surety bond to the state in such sum as the board may determine. The premium on the bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the fund.

C. The board may make expenditures of the fund for any purpose that in the opinion of the board is reasonably necessary for the proper performance of its duties pursuant to the Engineering and Surveying Practice Act, including the expenses of the board's delegates to the conventions of, and for membership dues to, the national council of examiners for engineering and surveying and any of its subdivisions or any other body of similar purpose.

History: Laws 1987, ch. 336, § 11; 1993, ch. 218, § 8; 1999, ch. 259, § 7; 2017, ch. 42, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-11 NMSA 1978, as enacted by Laws 1957, ch. 211, § 7, relating to removal of board members, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, in Subsection A, after "approved by the", changed "chairman" to "chair".

The 1999 amendment, effective June 18, 1999, added "fund created" to the section heading; substituted

references to "fund" for references to "professional engineers' and surveyors' fund" throughout the section; and in Subsection A, added the first and last sentences, and substituted "the fund" for "a separate fund" in the second sentence.

The 1993 amendment, effective July 1, 1993, substituted "executive director" for "secretary" in the first and second sentences of Subsection A and in the first sentence of Subsection B; and substituted "examiners for engineering and surveying" for "engineering examiners" near the end of Subsection C.

61-23-12. Records and reports. (Repealed effective July 1, 2024.)

A. The board shall keep a record of its proceedings and a register of all applications for licensure, indicating the name, age and residence of each applicant, the applicant's educational and other qualifications, whether an examination was required, whether the applicant was rejected, whether a certificate of licensure was granted, the date of the action of the board and such other information as may be deemed necessary by the board. The record and register shall be open to public inspection.

B. The following board records and papers are of a confidential nature and are not public records:

- (1) examination material for examinations not yet given;
- (2) file records of examination problem solutions;
- (3) letters of inquiry and reference concerning applicants;
- (4) board inquiry forms concerning applicants;
- (5) investigation files where any investigation is ongoing or is still pending; and
- (6) all other materials of like confidential nature.

C. The records of the board shall be prima facie evidence of the proceedings of the board set forth in those records, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same effect as if the original were produced.

D. Annually, on or before August 30, the board shall submit to the governor a report of its transactions of the preceding year, accompanied by a complete statement of the receipts and expenditures of the board attested by affidavits of the board's chair, secretary and executive director.

History: Laws 1987, ch. 336, § 12; 1993, ch. 218, § 9; 1999, ch. 259, § 8; 2017, ch. 42, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-12 NMSA 1978, as amended by Laws 1979, ch. 363, § 6, relating to organization and meetings of the board, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, in Subsection D, after "affidavits of the board's", changed "chairman" to "chair".

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" twice in Subsection A, and substituted "same effect" for "same force and effect" in Subsection C.

The 1993 amendment, effective July 1, 1993, deleted "the date of the application, the place of business of such applicant" following "residence of each applicant" in the first sentence of Subsection A; inserted "ongoing or is" in Subsection B(5); added "and executive director" at the end of Subsection D; and made minor stylistic changes in Subsections A and D.

61-23-13. Roster of licensed professional engineers and professional surveyors. (Repealed effective July 1, 2024.)

A roster showing the names and addresses of all licensed professional engineers and licensed professional surveyors shall be maintained by the board and shall be placed on file with the state commission of public records and made available to the public.

History: Laws 1987, ch. 336, § 13; 1993, ch. 218, § 10; 1999, ch. 259, § 9; 2012, ch. 46, § 2; 2017, ch. 42, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-13 NMSA 1978, as amended by Laws 1979, ch. 363, § 7, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, removed the provision requiring the board to maintain and place a list of all licensed professional engineers and licensed professional surveyors with the secretary of state's office; in the catchline, after "engineers and", added "professional"; and after "licensed professional engineers and", added "licensed", and after "placed on file with", deleted "the secretary of state and".

The 2012 amendment, effective July 1, 2012, required the board to provide a roster of engineers and surveyors to the public; deleted former language which required the

board to prepare a roster in even-numbered years and a supplement to the roster in odd numbered years; to make the roster and supplement available to licensees, and permitted the board to distribute or sell the roster to the public; and after "professional surveyors shall be", added "maintained by the board and shall be placed on file with the secretary of state and the state commission of public records and made available to the public".

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" in the section heading and first sentence, and substituted "made available to each licensee" for "mailed to each registrant" in the last sentence.

The 1993 amendment, effective July 1, 1993, substituted "executive director" for "secretary" in the first and second sentences; and, in the third sentence, substituted "registrant no later than November 30 of each year" for "person so registered" and inserted "and the state commission of public records".

61-23-13.1. Repealed.

Repeals. — Laws 1987, ch. 336, § 34 repeals former 61-23-13.1 NMSA 1978, as enacted by Laws 1981, ch. 336,

§ 1, relating to surveying rules and regulations, effective June 19, 1987.

61-23-14. Certification as an engineer intern; requirements. (Repealed effective July 1, 2024.)

A. An applicant for certification as an engineer intern shall file the appropriate application that demonstrates that the applicant:

- (1) is of good moral character and reputation;
- (2) has obtained at least a senior status in a board-approved, four-year curriculum in engineering or in a board-approved, four-year curriculum in engineering technology that is accredited by the technical accreditation commission of the accreditation board for engineering and technology; and

(3) has three references, one of whom shall be a licensed professional engineer.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as an engineer intern.

C. An applicant may be certified as an engineer intern upon successfully completing the examination, provided that the applicant has:

(1) graduated from a board-approved, four-year engineering curriculum; or

(2) graduated from a board-approved, four-year engineering technology program accredited by the technical accreditation commission of the accreditation board for engineering and technology, augmented by at least two years of board-approved, post-graduate engineering experience.

D. The certification as engineer intern does not permit the intern to practice as a professional engineer. Certification as an engineer intern is intended to demonstrate that the intern has obtained certain skills in engineering fundamentals and is pursuing a career in engineering.

History: 1978 Comp., § 61-23-14, enacted by Laws 1993, ch. 218, § 11; 1999, ch. 259, § 10; 2005, ch. 69, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed a former 61-23-14 NMSA 1978, as amended by Laws 1979, ch. 363, § 8, relating to receipts and disbursements, effective June 19, 1987, and enacted former 61-23-14 NMSA 1978.

Laws 1993, ch. 218, § 11 repealed former 61-23-14 NMSA 1978, as enacted by Laws 1987, ch. 336, § 14, which concerned the requirements for registration as a

professional engineer or certification as an engineering intern, and enacted a new section, effective July 1, 1993.

The 2005 amendment, effective June 17, 2005, eliminates the limitation in Subsection B on the number of examinations an applicant may take.

The 1999 amendment, effective June 18, 1999, deleted "related science curriculum" following "curriculum in engineering" in Subsection A(2); substituted "licensed professional" for "registered professional" in Subsection A(3); and deleted "related science curriculum or" preceding "engineering technology program" in Subsection C(2).

61-23-14.1. Licensure as a professional engineer; requirements. (Repealed effective July 1, 2024.)

A. Licensure as a professional engineer may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application in which it shall be demonstrated that the applicant:

(1) is of good moral character and reputation; and

(2) has five references, three of whom shall be licensees practicing in the branch of engineering for which the applicant is applying and who have personal knowledge of the applicant's engineering experience and reputation. The use of non-licensed engineer references having personal knowledge of the applicant's engineering experience and reputation may be accepted by the board; provided that a satisfactory written explanation is given.

B. An applicant may be licensed through examination if the applicant can demonstrate the following:

(1) the applicant is certified as an engineer intern and has at least one of the following:

(a) received a bachelor's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or a program that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least four years of engineering experience subsequent to receiving the degree;

(b) received a bachelor's degree in an engineering discipline recognized by the board from a foreign educational institution where the program that was completed fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least four years of engineering experience in the United States subsequent to receiving the degree;

(c) received a master's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or an institution that offers programs accredited by the engineering accreditation commission or that fulfills the required content of the engineering education standard as defined by the national council of examiners for

engineering and surveying and has at least three years of engineering experience subsequent to receiving the degree;

(d) received a master's degree in an engineering discipline recognized by the board from a foreign educational institution where the program that was completed fulfills through evaluation the required curricular content and educational standards as defined by the national council of examiners for engineering and surveying and has at least three years of engineering experience in the United States subsequent to receiving the degree;

(e) received a doctorate degree in an engineering discipline recognized by the board from a board-approved engineering curriculum and has at least two years of engineering experience subsequent to receiving the degree; or

(f) at least six years of board-approved engineering experience after graduation from a school offering a board-approved, four-year engineering technology curriculum accredited by the technology accreditation commission of the accreditation board for engineering and technology, including the two years for engineer intern certification; or

(2) the applicant is not certified as an engineer intern and has at least one of the following:

(a) received a bachelor's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or a program that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has twelve years of engineering experience subsequent to receiving the degree;

(b) received a master's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or an institution that offers programs accredited by the engineering accreditation commission or that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least six years of engineering experience subsequent to receiving the degree; or

(c) received a doctorate degree in an engineering discipline recognized by the board from a board-approved engineering curriculum and has at least four years of engineering experience subsequent to receiving the degree.

C. Upon successfully completing the examination, required experience and all the requirements as noted in this section, the applicant shall be eligible to be licensed as a professional engineer upon action of the board.

D. An applicant may be licensed by endorsement or comity if the applicant:

(1) is currently licensed as an engineer in the District of Columbia, another state, a territory or a possession of the United States; provided that the licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed;

(2) is currently licensed as an engineer in a foreign country and can demonstrate, to the board's satisfaction, evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act and can satisfactorily demonstrate to the board competence in current engineering standards and procedures; or

(3) is currently licensed as an engineer in the District of Columbia, another state, a territory or a possession of the United States; provided that the applicant:

(a) has been actively licensed for the contiguous ten years immediately preceding application to New Mexico;

(b) has not received any form of disciplinary action related to the practice of engineering or professional conduct from any jurisdiction within the five years preceding application to New Mexico; and

(c) has not had the applicant's professional license suspended or revoked at any time from any jurisdiction.

History: 1978 Comp., § 61-23-14.1, enacted by Laws 1993, ch. 218, § 12; 1999, ch. 259, § 11; 2003, ch. 233, §

3; 2005, ch. 69, § 7; 2012, ch. 46, § 3; 2017, ch. 42, § 6; 2019, ch. 220, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2019 amendment, effective June 14, 2019, provided additional grounds for reciprocity for engineers licensed in other jurisdictions; in Subsection D, added new Paragraph D(3).

The 2017 amendment, effective July 1, 2017, revised the requirements for licensure as a professional engineer; in Subsection A, in Paragraph A(2), after "experience and reputation", deleted "other than professional engineers"; and in Subsection B, in Subparagraph B(1)(a), after "recognized by the board from a", deleted "board-approved engineering curriculum" and added "program accredited by the engineering accreditation commission or a program that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying", after "and has", added "at least", added new Subparagraph B(1)(b) and redesignated former Subparagraph B(1)(b) as Subparagraph B(1)(c), in Subparagraph B(1)(c), after "recognized by the board from a", deleted "board-approved engineering curriculum" and added "program accredited by the engineering accreditation commission or an institution that offers programs accredited by the engineering accreditation commission or that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying", added new Subparagraph B(1)(d) and redesignated former Subparagraphs B(1)(c) and B(1)(d) as Subparagraphs B(1)(e) and B(1)(f), in Subparagraph B(2)(a), after "recognized by the board from a", deleted "board-approved engineering curriculum" and added "program accredited by the engineering accreditation commission or a program that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying", and in Subparagraph B(2)(b), after "recognized by the board from a", deleted "board-approved engineering curriculum"

and added "program accredited by the engineering accreditation commission or an institution that offers programs accredited by the engineering accreditation commission or that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying".

Applicability. — Laws 2017, ch. 42, § 20 provided that the provisions of Section 61-23-14.1 NMSA 1978 apply to persons initially applying for licensure as a professional engineer on or after July 1, 2017.

The 2012 amendment, effective July 1, 2012, changed the experience requirements for licensure; in Subsection B, deleted former language which provided internship, educational, and experience requirements for licensure; deleted former Subsection B which permitted applicants to take examinations approved by the board; and added Subsection B.

The 2005 amendment, effective June 17, 2005, changed the qualification in Subsection A.(e) to require a minimum of twelve years of engineering experience subsequent to the awarding of an engineering degree; provided in Subsection B that the board approves the appropriate examination and provided in Subsection C that the applicant must successfully complete the exam, the required experience and other requirements of this section to be eligible for a license.

The 2003 amendment, effective June 20, 2003, deleted Paragraph A(2) and redesignated former Paragraph A(2) as Paragraph A(3); substituted "meets one of the following requirements:" for "either" in present Paragraph (2); redesignated former Paragraphs A(3) and A(4) as Subparagraphs A(2)(a) and A(2)(b); and inserted Paragraphs A(c) through A(e).

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes throughout the section; deleted "related science or" preceding "engineering technology curriculum" in Subsection A(5).

61-23-15, 61-23-16. Repealed.

Repeals. — Laws 1993, ch. 218, § 41 repealed former 61-23-15 and 61-23-16 NMSA 1978, as enacted by Laws 1987, ch. 336, §§ 15 and 16, concerning registration as a professional surveyor and certification as a surveying

intern, effective July 1, 1993. For provisions of former sections, see the 1992 NMSA 1978 on *NMOneSource*.

61-23-17. Application and examination fees. (Repealed effective July 1, 2024.)

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act shall apply for examination, licensure or certification on forms prescribed and furnished by the board. Except as provided in Section 61-1-34 NMSA 1978, applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and education, a detailed summary of the applicant's technical work and appropriate references.

B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the Engineering and Surveying Practice Act. No fees shall be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or any crime involving moral turpitude.

History: 1987, ch. 336, § 17; 2005, ch. 69, § 8; 2012, ch. 46, § 4; 2020, ch. 6, § 48.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-17 NMSA 1978, as enacted Laws 1979, ch. 363, § 11, relating to general requirements for registration or certification as an engineer, effective June 19, 1987, and enacted a new section.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2012 amendment, effective July 1, 2012, eliminated the concept of registration as a professional engineer and in Subsection A, in the first sentence, after "examination", deleted "registration" and added "licensure".

The 2005 amendment, effective June 17, 2005, changes "his" to "the applicant's" in Subsection A,

61-23-17.1. Repealed.

Repeals. — Laws 1987, ch. 336 repealed former 61-23-17.1 NMSA 1978, as enacted by Laws 1979, ch. 363, § 12, concerning general requirements for registration

or certification of professional land surveyors, effective June 19, 1987.

61-23-18. Engineering; examinations. (Repealed effective July 1, 2024.)

The examinations for engineering certification and licensure shall be held at least once a year at a time and place the board directs. The engineering committee shall determine the passing grade on examinations.

History: Laws 1987, ch. 336, § 18; 1993, ch. 218, § 13; 1999, ch. 259, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-18 NMSA 1978, as amended by Laws 1979, ch. 363, § 13, relating to application and examination fees, effective June 19, 1987, and enacted a new section.

The 1999 amendment, effective June 18, 1999, substituted "certification and licensure" for "certification and registration" in the first sentence.

The 1993 amendment, effective July 1, 1993, rewrote the section to the extent that a detailed comparison is impracticable.

61-23-19. Engineering; licenses; seals; incidental architectural work; supplemental surveying work. (Repealed effective July 1, 2024.)

A. The board shall issue licenses pursuant to the provisions of the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals and may approve alternative authentications to physical or electronic seals.

C. An engineer shall have the right to engage in activities properly classified as architecture insofar as it is incidental to the engineer's work as an engineer; provided that the engineer shall not make any representation as being an architect or as performing architectural services unless duly registered as such.

D. The board shall recognize that there may be occasions when professional engineers need to obtain supplemental survey information for the planning and design of an engineering project. A professional engineer who has primary engineering responsibility and control of an engineering project may perform supplemental surveying work in obtaining data incidental to that project. Supplemental surveying work may be performed by a professional engineer only on a project for which the engineer is providing engineering design services.

History: Laws 1987, ch. 336, § 19; 1993, ch. 218, § 14; 1999, ch. 259, § 13; 2012, ch. 46, § 5; 2017, ch. 42, § 7; 2019, ch. 220, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-19 NMSA 1978, as amended by Laws 1979, ch. 363, § 14, relating to examinations, effective June 19, 1987, and enacted a new section.

The 2019 amendment, effective June 14, 2019, authorized the board of licensure for professional engineers and professional surveyors to approve alternative authentications to physical or electronic seals; in Subsection B,

after "use of seals", added "and may approve alternative authentications to physical or electronic seals".

The 2017 amendment, effective July 1, 2017, provided rules for supplemental surveying work for the planning and design of an engineering project; in the catchline, changed "license" to "licenses", and added "incidental architectural work; supplemental surveying work"; and added Subsection D.

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; in the title after "Engineering", deleted "certificate" and added "license"; in Subsection A, in the first sentence, after "board shall issue", deleted "certificates of licensure" and added "licenses"; and in Subsection C, after "engineer shall not",

deleted "hold himself out to be" and added "make any representation as being".

The 1999 amendment, effective June 18, 1999, substituted "certificates of licensure pursuant to" for "certificates of registration under" in Subsection A.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

61-23-20. Engineering; licensure and renewal fees; expirations. (Repealed effective July 1, 2024.)

A. Licensure shall be for a period of two years as prescribed in the rules of procedure. Initial licenses shall be issued in accordance with the board's rules.

B. The board shall establish by rule a biennial fee for professional engineers. Except as provided in Section 61-1-34 NMSA 1978, licensure renewal is accomplished upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director of the board shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. Each licensee shall have the responsibility to notify the board of any change of address within thirty days of the change.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional engineer for the biennial period.

F. Every license shall automatically expire if not renewed on or before December 31 of the applicable biennial period. A delinquent licensee may renew a license by the payment of twice the biennial renewal fee at any time before March 1, but the delinquent licensee shall not practice during this period. Should the licensee apply to renew an expired license after the March 1 deadline has elapsed, the licensee shall submit a formal application and fee as provided in Section 61-23-17 NMSA 1978. The board, in considering the reapplication, may consider the applicant's qualifications for licensure if the requirements for licensure have changed since the applicant was first licensed. The board may adopt rules for inactive and retired status.

History: Laws 1987, ch. 336, § 20; 1993, ch. 218, § 15; 1999, ch. 259, § 14; 2005, ch. 69, § 9; 2012, ch. 46, § 6; 2017, ch. 42, § 8; 2020, ch. 6, § 49.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-20 NMSA 1978, as amended by Laws 1979, ch. 363, § 15, relating to certificates and seals, effective June 19, 1987, and enacted a new section.

The 2020 amendment, effective July 1, 2020, provided an exception to the license renewal fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection B, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2017 amendment, effective July 1, 2017, revised certain language regarding qualifications for licensure that the board may consider; in Subsection F, after "reapplication," deleted "need not question" and added "may consider", after "qualifications for licensure", deleted "unless" and added "if", after the next occurrence of "the", deleted "qualifications" and added "requirements for licensure", and after "changed since the", deleted "license expired" and added "applicant was first licensed".

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; established deadlines for notification of change of address and for renewal of a license by a delinquent licensee; prohibited a delinquent licensee from practicing until the license is renewed; in Subsection A, in the second sentence, after "Initial", deleted "certificates of licensure" and added

"licenses"; in Subsection D, after "change of address", added "within thirty days of the change"; in Subsection F, in the first sentence, after "on or before", deleted "the last day" and added "December 31" and after "of the", added "applicable", in the second sentence, after "A", deleted "licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a", after "may renew a", deleted "certificate" and added "license", and after "renewal fee at any time", deleted "up to twelve months after the renewal fee became due", added "before March 1, but the delinquent licensee shall not practice during this period", and in the third sentence, after "Should the licensee", deleted "wish" and added "apply", after "renew an expired", deleted "certificate" and added "license", and after "license after the", deleted "twelve-month period" and added "March 1 deadline".

The 2005 amendment, effective June 17, 2005, provided that initial certification of licensure shall be issued in accordance with the board's rules.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes throughout the section; in Subsection A, deleted "regulations and" preceding "rules of procedure" in the first sentence; and added the last sentence in Subsection F.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

61-23-21. Practice of engineering. (Repealed effective July 1, 2024.)

A. No business entity shall be licensed pursuant to the Engineering and Surveying Practice Act. No business entity shall practice or offer to practice engineering in the state except as provided in the Engineering and Surveying Practice Act.

B. Professional engineers may engage in the practice of engineering and perform engineering work pursuant to the Engineering and Surveying Practice Act as individuals or through a business entity. In the case of an individual, the individual shall be a professional engineer pursuant to the Engineering and Surveying Practice Act. All plans, designs, drawings, specifications or reports that are involved in such practice, or that are issued by or for the practice, shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for the work issued. In the case of practice through a business entity that is a partnership, at least one of the partners shall be a professional engineer pursuant to the Engineering and Surveying Practice Act, and all plans, designs, drawings, specifications or reports that are involved in such practice, or that are issued by or for the partnership, shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for such work when issued. In the case of practice through a business entity other than a partnership, services or work involving the practice of engineering may be offered through that business entity; provided that the person in responsible charge of the activities of the business entity that constitute engineering practice is a professional engineer who has authority to bind such business entity by contract; and further provided that all plans, designs, drawings, specifications or reports that are involved in engineering practice, or that are issued by or for such business entity, bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work when issued.

C. An individual or business entity may not use or assume a name involving the terms "engineer", "professional engineer", "engineering", "registered" or "licensed" engineer or any modification or derivative of such terms unless that individual or business entity is qualified to practice engineering in accordance with the requirements of the Engineering and Surveying Practice Act.

D. In the case of practice through a business entity offering or providing services or work involving the practice of engineering, an authorized company officer and the professional engineer who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional engineer or authorized company officer, the affidavit shall be promptly revised and resubmitted to the board.

History: Laws 1987, ch. 336, § 21; 1993, ch. 218, § 16; 1999, ch. 259, § 15; 2017, ch. 42, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-21 NMSA 1978, as amended by Laws 1979, ch. 363, § 16, relating to registration and renewal fees and expirations, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, provided additional rules for the practice of engineering through a business entity; replaced "firm, partnership, corporation or joint stock association" with "business entity" throughout the section; in Subsection B, after "Engineering and Surveying Practice Act as individuals", deleted "partners", after "specifications or reports that are involved in such practice," added "or that are", after "In the case of practice through", added "a business entity that is a", after "specifications or reports that are involved in such practice", added "or that are", after "In the case of practice through a", deleted "joint stock association or corporation", and added "business entity other than a partnership", after "specifications or reports that are involved in engineering practice", added "or that are"; in Subsection C, after "in accordance with the requirements", deleted "in this section" and added "of the Engineering and Surveying Practice Act"; and added Subsection D.

The 1999 amendment, effective June 18, 1999, substituted "licensed pursuant to" for "registered under" in the first sentence of Subsection A, and made minor stylistic changes throughout the section.

The 1993 amendment, effective July 1, 1993, rewrote the catchline; deleted "or surveying" following "engineering" in the second sentence of Subsection A; in Subsection B, substituted "engage in the practice of engineering and perform engineering work" for "practice" in the first sentence, inserted the second and third sentences, and rewrote the last sentence; deleted former Subsection C, pertaining to professional surveyors; redesignated former Subsection D as present Subsection C; in Subsection C, inserted "individual" in two places, substituted "registered" or "licensed" engineer" for "surveyor", "professional surveyor" or "surveying", and deleted "or surveying" following "practice engineering"; and made minor stylistic changes throughout the section.

ANNOTATIONS

Qualifying as expert witness. — Even though a biomechanical engineer was not licensed as an engineer, the trial court did not abuse its discretion by qualifying him to testify as an expert witness regarding causation of temporomandibular joint injuries. *Baerwald v. Flores*, 1997-NMCA-002, 122 N.M. 679, 930 P.2d 816, cert. denied, 122 N.M. 589, 929 P.3d 981.

61-23-22. Engineering; exemptions. (Repealed effective July 1, 2024.)

A. A New Mexico licensed architect who has complied with all of the laws of New Mexico relating to the practice of architecture has the right to engage in the incidental practice, as defined by regulation, of activities properly classified as engineering; provided that the architect shall not make any representation as being an engineer or as performing engineering services; and further provided that the architect shall perform only that part of the work for which the architect is professionally qualified and shall use qualified professional engineers or others for those portions of the work in which the contracting architect is not qualified. Furthermore, the architect shall assume all responsibility for compliance with all laws, codes, regulations and ordinances of the state or its political subdivisions pertaining to all documents bearing the architect's professional seal.

B. An engineer employed by a business entity who performs only the engineering services involved in the operation of the business entity's business shall be exempt from the provisions of the Engineering and Surveying Practice Act; provided that neither the employee nor the business entity offers engineering services to the public. Performance of engineering on public works projects pursuant to Section 61-23-26 NMSA 1978 constitutes engineering services to the public and is not exempt.

History: 1978 Comp., § 61-23-22, enacted by Laws 1993, ch. 218, § 17; 1998, ch. 43, § 1; 2017, ch. 42, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-32 NMSA 1978, as amended by Laws 1979, ch. 363, § 17, relating to organizations permitted to practice, effective June 19, 1987, and enacted former 61-23-22 NMSA 1978.

Laws 1993, ch. 218, § 17 repealed former 61-23-22 NMSA 1978, as enacted by Laws 1987, ch. 336, § 22, providing exemptions from the Engineering and Surveying Practice Act, and enacted a new section, effective July 1, 1993.

The 2017 amendment, effective July 1, 2017, clarified that performing engineering services on public works projects constitutes engineering services to the public and is not exempt from the provisions of the Engineering and Surveying Practice Act; in Subsection A, after "the architect shall not", deleted "hold himself out to be" and added "make any representation as being"; and in Subsection B, after "employed by a", deleted "firm, association or corporation" and added "business entity", after "operation of the", deleted "employer's" and added "business entity's", after "the employee nor the", deleted "employer" and added "business entity", and added the last sentence.

The 1998 amendment, effective May 20, 1998, deleted Subsection B and redesignated Subsection C as Subsection B.

61-23-23. Repealed.

Repeals. — Laws 1993, ch. 218, § 41 repealed former 61-23-23 NMSA 1978, as enacted by Laws 1987, ch. 336, § 23, concerning registration by endorsement, effective

July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

61-23-23.1. Authority to investigate; civil penalties for unlicensed persons; engineering. (Repealed effective July 1, 2024.)

A. The board may investigate and initiate a hearing on a complaint against a person who does not have a license, who is not exempt from the Engineering and Surveying Practice Act and who acts in the capacity of a professional engineer within the meaning of the Engineering and Surveying Practice Act. A valid license is required for a person to act as a professional engineer or to solicit or propose to perform work involving the practice of engineering.

B. If after the hearing the board determines that based on the evidence the person committed a violation pursuant to the Engineering and Surveying Practice Act, it shall, in addition to any other sanction, action or remedy, issue an order that imposes a civil penalty up to seven thousand five hundred dollars (\$7,500) per violation.

C. In determining the amount of the civil penalty it imposes, the board shall consider:

- (1) the seriousness of the violation;
- (2) the economic benefit to the violator that was generated by the violator's commission of the violation;
- (3) the violator's history of violations; and
- (4) any other considerations the board deems appropriate.

D. A person aggrieved by the board's decision may appeal a decision made or an order issued pursuant to Subsection B of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

E. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Engineering and Surveying Practice Act is a misdemeanor, and upon conviction the person shall be sentenced pursuant to Section 31-19-1 NMSA 1978. Conviction shall be grounds for further action against the person by the board and for judicial sanctions or relief, including a petition for injunction.

History: Laws 2003, ch. 233, § 4; 2012, ch. 46, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Compiler's notes. — This section was originally enacted by the legislature as 61-23-23 NMSA 1978, but it was redesignated by the compiler because of the existence of a former 61-23-23 NMSA 1978 that was repealed in 1993.

The 2012 amendment, effective July 1, 2012, provided that a valid license is required to act as an engineer or to seek work involving the practice of engineering; increased the penalty; in Subsection A, added the last sentence; and in Subsection B, after "penalty up to", deleted "five thousand dollars (\$5,000)" and added "seven thousand five hundred dollars (\$7,500)".

61-23-24. Engineering; violations; disciplinary action; penalties; reissuance of licenses. (Repealed effective July 1, 2024.)

A. In accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the board may suspend, refuse to renew or revoke a license, impose a fine not to exceed seven thousand five hundred dollars (\$7,500), place on probation for a specific period of time with specific conditions or reprimand any professional engineer who is found by the board to have:

- (1) practiced or offered to practice engineering in New Mexico in violation of the Engineering and Surveying Practice Act;
- (2) attempted to use the license of another;
- (3) given false or forged evidence to the board or to a board member for obtaining a license;
- (4) falsely impersonated another licensee of like or different name;
- (5) attempted to use an expired, suspended or revoked license;
- (6) falsely purported to be a professional engineer by claim, sign, advertisement or letterhead;
- (7) violated the rules of professional responsibility for professional engineers adopted and promulgated by the board;
- (8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board;
- (9) been convicted of a felony; or
- (10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules of the board.

B. Except as provided in Subsection C of Section 61-23-21 NMSA 1978, nothing in the Engineering and Surveying Practice Act shall prohibit the general use of the word "engineer", "engineered" or "engineering" so long as such words are not used in an offer to the public to perform engineering work as defined in Subsections F and H of Section 61-23-3 NMSA 1978.

C. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. The guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

D. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

E. A person may prefer charges of fraud, deceit, gross negligence, incompetence or misconduct against a licensed professional engineer. The charges shall be in writing and shall be sworn to by the person making the charges and filed with the executive director of the board. All charges shall be referred to the engineering committee, acting for the board. No action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall

be heard in accordance with the provisions of the Uniform Licensing Act by the engineering committee acting for the board or by the board.

F. Persons making charges shall not be subject to civil or criminal suits; provided that the charges are made in good faith and are not frivolous or malicious.

G. The board or a board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

H. The board, for reasons it deems sufficient, may reissue a license to a person whose license has been revoked or suspended if a majority of the members of the engineering committee, acting for the board, or of the board votes in favor of the reissuance. A new license bearing the original license number to replace a revoked, lost, destroyed or mutilated license may be issued subject to the rules of the board with payment of a fee.

I. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than seven thousand five hundred dollars (\$7,500) or by imprisonment of no more than one year, or both.

J. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.

K. The practice of engineering in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county where the violation occurs.

History: 1978 Comp., § 61-23-24, enacted by Laws 1993, ch. 218, § 18; 1999, ch. 259, § 16; 2005, ch. 69, § 10; 2012, ch. 46, § 8; 2017, ch. 42, § 11; 2022, ch. 39, § 87.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-24 NMSA 1978, as amended by Laws 1979, ch. 363, § 19, relating to registration by endorsement, effective June 19, 1987, and enacted former 61-23-24 NMSA 1978.

Laws 1993, ch. 218, § 18 repealed former 61-23-24 NMSA 1978, as enacted by Laws 1987, ch. 336, § 24, concerning violations and disciplinary actions, and enacted a new section, effective July 1, 1993.

The 2022 amendment, effective May 18, 2022, clarified that the state board of licensure for professional engineers and professional surveyors is required to follow the provisions of the Uniform Licensing Act in disciplinary matters; and in Subsection A, added "In accordance with the Uniform Licensing Act".

The 2017 amendment, effective July 1, 2017, removed the provision related to the adoption of rules of professional responsibility for professional engineers, and revised references to Section 61-23-3 NMSA 1978; in Subsection B, after "Subsections", deleted "E" and added "F", and after the next "and", deleted "L" and added "H"; in Subsection H, after "payment of a fee", added a period and deleted "determined by the board."; and deleted

Subsection I and redesignated former Subsections J through L as Subsections I through K, respectively.

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; increased the fine; eliminated requirements for the publication and amendment of rules; in the title, after "reissuance of", deleted "and" and added "licenses"; in Subsections A and H, substituted "license" for "certificate of licensure" throughout the sections; in Subsection A, after "not to exceed", deleted "five thousand dollars (\$5,000)" and added "seven thousand five hundred dollars (\$7,500)"; in Subsection I, deleted former language which provided for the publication and amendment of rules of professional responsibility; and in Subsection J, after "not more than" deleted "five thousand dollars (\$5,000)" and added "seven thousand five hundred dollars (\$7,500)".

The 2005 amendment, effective June 17, 2005, provided in Subsection I that the professional engineering committee shall adopt, revise and amend rules of professional responsibility for professional engineers.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes throughout the section; deleted "and regulations" following "rules" in Subsections A(8) and A(10); added the exception at the beginning of Subsection B; in Subsection E, deleted "the Uniform Licensing Act" preceding "Subsection D, E, or F" in the third sentence, and inserted "or settled informally" in the last sentence.

61-23-24.1. Engineering; professional development. (Repealed effective July 1, 2024.)

The board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure of the board.

History: 1978 Comp., § 61-23-24.1, enacted by Laws 1993, ch. 218, § 19.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

61-23-25. Repealed.

Repeals. — Laws 1993, ch. 218, § 41 repealed former 61-23-25 NMSA 1978, as enacted by Laws 1987, ch. 336, § 25, concerning injunctions, effective July 1, 1993. For

provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

61-23-26. Engineering; public work. (Repealed effective July 1, 2024.)

It is unlawful for the state or any of its political subdivisions or any person to engage in the construction of any public work involving engineering unless the engineering is under the responsible charge of a licensed professional engineer.

History: Laws 1987, ch. 336, § 26; 1993, ch. 218, § 20; 1999, ch. 259, § 17; 2017, ch. 42, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-26 NMSA 1978, as amended by Laws 1979, ch. 363, § 21, relating to violations and penalties, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, removed the provision requiring professional surveying to be executed under the charge of a licensed professional surveyor, and removed provisions exempting certain public works projects; in the catchline, added "Engineering"; deleted the subsection designation "A.", after "political subdivisions", added "or any person", after "involving engineering unless the", deleted "plans and specifications involving", after "engineering", deleted "have been prepared by and are" and added "is", and after "under the responsible

charge of a licensed professional engineer", deleted the remainder of the paragraph, which provided an exemption for certain public works projects; and deleted Subsection B, which provided an exemption for certain construction surveys of engineering and architectural public works projects from the Engineering and Surveying Practice Act.

The 1999 amendment, effective June 18, 1999, deleted "Engineering" at the beginning of the section heading, and substituted "licensed" for "registered" twice in Subsection A.

The 1993 amendment, effective July 1, 1993, deleted former Subsection A, pertaining to adoption of rules governing the practice of engineering and surveying in public works project; redesignated former Subsections B and C as present Subsections A and B; deleted "professional" preceding "engineering" in two places in Subsection A; and made a minor stylistic change in Subsection A.

61-23-27. Engineering; public officer; licensure required. (Repealed effective July 1, 2024.)

No person except a licensed professional engineer shall be eligible to hold any responsible office or position for the state or any political subdivision of the state that includes the performance or responsible charge of engineering work.

History: Laws 1987, ch. 336, § 27; 1993, ch. 218, § 21; 1999, ch. 259, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-27 NMSA 1978, as amended by Laws 1979, ch. 363, § 22, relating to injunctions, effective June 19, 1987, and enacted a new section.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" in the section heading, and "licensed" for "registered" in the section.

The 1993 amendment, effective July 1, 1993, added "Engineering" at the beginning of the catchline, deleted "or professional surveyor, whichever is applicable" following "professional engineer"; substituted "that includes" for "which requires", and deleted "or surveying work" at the end of the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Public Officers and Employees § 50 to 52.

67 C.J.S. Officers and Public Employees § 34.

61-23-27.1, 61-23-27.2. Repealed.

Repeals. — Laws 1999, ch. 259, § 35 repealed 61-23-27.1 and 61-23-27.2 NMSA 1978, as enacted by Laws 1993, ch. 218, §§ 22 and 23, relating to certification of

surveyor interns and registration of professional surveyors, effective June 18, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

61-23-27.3. Certification of surveyor intern; requirements. (Repealed effective July 1, 2024.)

A. An applicant for certification as a surveyor intern shall file the appropriate application and demonstrate that the applicant:

- (1) is of good moral character and reputation;
- (2) has obtained at least a senior status in a board-approved, four-year curriculum in surveying; and
- (3) has three references, two of whom shall be licensed professional surveyors having personal knowledge of the applicant's knowledge and experience.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as a surveyor intern.

C. Upon successfully completing the examination and an approved four-year surveying curriculum, then by action of the board, the applicant may be certified as a surveyor intern.

D. The certification of surveyor intern does not permit the intern to practice surveying. Certification as a surveyor intern is intended to demonstrate that the intern has obtained certain skills in surveying fundamentals and is pursuing a career in surveying.

E. If otherwise qualified, a graduate of a board-approved but related curriculum of at least four years, to be considered for certification as a surveyor intern, shall have a specific record of two years of combined office and field board-approved surveying experience obtained under the direction of a licensed professional surveyor. Class time will not be counted in the two years of required experience, but work prior to or while attending school may be counted toward the two years of required experience at the discretion of the board.

History: 1978 Comp., § 61-23-27.3, enacted by Laws 1993, ch. 218, § 24; 1999, ch. 259, § 19; 2012, ch. 46, § 9; 2019, ch. 220, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2019 amendment, effective June 14, 2019, revised certain requirements to be considered for certification as a surveyor intern; in Subsection E, after "specific record of", deleted "four" and added "two", after "not be counted in the", deleted "four" and added "two", and after "toward the", deleted "four" and added "two".

The 2012 amendment, effective July 1, 2012, permitted the board to credit work prior to or while attending school toward the experience requirement; in Subsection A, in the introductory sentence, after "appropriate

application", deleted "where he shall"; and in Subsection E, in the second sentence, added "Class", after "Class time", deleted "spent in obtaining the related curriculum" and after "not be counted in the four years of required experience", added the remainder of the sentence.

The 1999 amendment, effective June 18, 1999; deleted "effective July 1, 1995" at the end of the section heading and at the beginning of Subsection A; substituted "licensed" for "registered" in Subsections A(3) and E; substituted "intern" for "registrant" in the first sentence of Subsection D; and in Subsection E, substituted "a board-approved but related curriculum" for "an unapproved but related curriculum" in the first sentence, and deleted "unapproved or" preceding "related curriculum" in the last sentence.

61-23-27.4. Licensure as a professional surveyor; general requirements. (Repealed effective July 1, 2024.)

A. Licensure as a professional surveyor may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application to demonstrate that the applicant:

- (1) is of good moral character and reputation;
- (2) is certified as a surveyor intern;
- (3) has at least four years of board-approved surveying experience if graduated from a four-year, board-approved surveying curriculum as defined by board rule;
- (4) has five references, three of which shall be from licensed professional surveyors having personal knowledge of the applicant's surveying experience; and
- (5) if graduated from a board-approved, four-year related science curriculum as specifically defined by board rules, has a minimum of four years of board-approved surveying experience subsequent to certification as a surveyor intern.

B. The applicant's experience pursuant to Paragraphs (3) and (5) of Subsection A of this section shall, at a minimum, include three years of increasingly responsible experience in boundary surveying and four years of increasingly responsible experience under the direct supervision of a licensed professional surveyor.

C. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for licensure as a professional surveyor.

D. Upon successfully completing the examination, the applicant shall be eligible to be licensed as a professional surveyor upon action of the board.

E. If otherwise qualified, an applicant may be licensed if the applicant is currently licensed as a professional surveyor in:

(1) the District of Columbia, another state, a territory or a possession of the United States, provided that:

(a) licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required for licensure and the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; and

(b) the applicant has passed examinations the board deems necessary to determine the applicant's qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state; or

(2) a foreign country and can demonstrate to the board's satisfaction:

(a) evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act; and

(b) competence in current surveying standards and procedures by passing examinations the board deems necessary to determine the applicant's qualification, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in New Mexico.

History: 1978 Comp., § 61-23-27.4, enacted by Laws 1993, ch. 218, § 25; 1999, ch. 259, § 20; 2005, ch. 69, § 11; 2012, ch. 48, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2012 amendment, effective July 1, 2012, changed the experience requirements for licensure; in Subsection A, in Paragraph (3), after "board approved surveying curriculum", deleted "or has a minimum of eight years of board-approved surveying experience, including the four years of experience required for surveying intern certification, if graduated from a four-year, board-approved related science curriculum; and" and added "as defined by board rule", and added Paragraph (5); in Subsection B, after "experience pursuant to", deleted "Paragraph" and added "Paragraphs", and after "Paragraphs (3)", added "and (5)".

The 2005 amendment, effective June 17, 2005, required the applicant to demonstrate at least four years of board-approved surveying experience if the applicant has graduated from a four year, board approved curriculum or has a minimum of eight years of board-approved surveying experience, including the four years of experience required for surveying intern certification.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes in the section heading and throughout the section; deleted "effective July 1, 1995" at the end of the section heading and at the beginning of Subsection A; in Subsection A(3), substituted the language beginning "if graduated from a four-year" for "after graduation; and"; and inserted "pursuant to Paragraph (3) of Subsection A of this section" in Subsection B.

61-23-27.5. Surveying; application and examination fees. (Repealed effective July 1, 2024.)

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act shall apply for examination, licensure or certification on forms prescribed and furnished by the board. Except as provided in Section 61-1-34 NMSA 1978, applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and education, a detailed summary of the applicant's technical work and appropriate references.

B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the Engineering and Surveying Practice Act. Fees shall not be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude.

History: 1978 Comp., § 61-23-27.5, enacted by Laws 1993, ch. 218, § 26; 1999, ch. 259, § 21; 2017, ch. 42, § 13; 2020, ch. 6, § 50.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and

for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2017 amendment, effective July 1, 2017, in Subsection A, after "a detailed summary of", deleted "his" and added "the applicant's".

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" in the first sentence of Subsection A.

61-23-27.6. Surveying; examinations. (Repealed effective July 1, 2024.)

The examinations for surveying certification and licensure shall be held at least once a year at a time and place the board directs. The surveying committee shall determine the passing grade on examinations.

History: 1978 Comp., § 61-23-27.6, enacted by Laws 1993, ch. 218, § 27; 1999, ch. 259, § 22.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" in the first sentence.

61-23-27.7. Surveying; licensure and renewal fees; expirations. (Repealed effective July 1, 2024.)

A. Licensure for surveyors shall be for a period of two years as prescribed in the rules of procedure. Initial certificates of licensure shall be issued to coincide with the biennial period. Initial licenses shall be issued in accordance with the board's rules.

B. The board shall establish by rule a biennial fee for professional surveyors. Except as provided in Section 61-1-34 NMSA 1978, renewal shall be granted upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director of the board shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. It shall be the responsibility of the licensee to notify the board of any change of address and to keep the license current.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional surveyor for the biennial period.

F. Every license shall automatically expire if not renewed on or before December 31 of the applicable biennial period. A delinquent licensee may renew a license by the payment of twice the biennial renewal fee at any time before March 1, but the delinquent licensee shall not practice during this period. Should the licensee wish to renew an expired license after the March 1 deadline has elapsed, the licensee shall submit a formal application as provided in Section 61-23-27.4 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired.

History: 1978 Comp., § 61-23-27.7, enacted by Laws 1993, ch. 218, § 28; 1999, ch. 259, § 23; 2005, ch. 69, § 12; 2012, ch. 46, § 11; 2020, ch. 6, § 51.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the license renewal fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection B, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; established a deadline for renewal of a license by a delinquent licensee; prohibited a delinquent licensee from practicing until the license is renewed; in Subsections A, D and F, substituted "license" for "certificate of licensure" throughout the sections; in Subsection A, in the first sentence, after "Licensure" added "for surveyors"; in Subsection F, in the first sentence, after "on or before", deleted "the last day" and added "December 31" and after "of the", added "applicable"; in the second sentence, after "A", deleted "licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee

within sixty days of the last day of the biennial period. After expiration of this grace period, a", after "may renew a", deleted "certificate" and added "license", and after "renewal fee at any time", deleted "up to twelve months after the renewal fee became due", added "before March 1, but the delinquent licensee shall not practice during this period", and in the third sentence, after "renew an expired", deleted "certificate" and added "license", and after "license after the", deleted "twelve-month period" and added "March 1 deadline".

The 2005 amendment, effective June 17, 2005, provided that initial certificates of licensure shall be issued in accordance with the board's rules.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes in the section heading and throughout the section; substituted "as provided in Section 61-23-27.4 NMSA 1978" for "as provided in Section 61-23-27.2 NMSA 1978 or, if after July 1, 1995 as provided in Section 61-23-27.4 NMSA 1978 of the Engineering and Surveying Practice Act" in the next-to-last sentence of Subsection F; and made minor stylistic changes throughout the section.

61-23-27.8. Surveying licenses and seals. (Repealed effective July 1, 2024.)

A. The board shall issue surveying licenses pursuant to the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals and may approve alternative authentications to physical or electronic seals.

History: 1978 Comp., § 61-23-27.8, enacted by Laws 1993, ch. 218, § 29; 1999, ch. 259, § 24; 2012, ch. 46, § 12; 2019, ch. 220, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2019 amendment, effective June 14, 2019, authorized the board of licensure for professional engineers and professional surveyors to approve alternative authentications to physical or electronic seals; in Subsection B, after "use of seals", added "and may approve alternative authentications to physical or electronic seals".

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; in the title, after "Surveying", deleted "certificates" and added "licenses"; and in Subsection A, in the first sentence, after "shall issue", deleted "certificates of licensure" and added "surveying licenses".

The 1999 amendment, effective June 18, 1999, substituted "licensure pursuant to" for "registration under" in the first sentence of Subsection A.

61-23-27.9. Surveying; practice of surveying; mandatory disclosure. (Repealed effective July 1, 2024.)

A. No business entity shall be licensed pursuant to the Engineering and Surveying Practice Act. No business entity shall practice or offer to practice surveying in the state except as provided in the Engineering and Surveying Practice Act.

B. Professional surveyors may engage in the practice of surveying and perform surveying work pursuant to the Engineering and Surveying Practice Act as individuals or through a business entity. In the case of an individual, the individual shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, or that are issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued. In the case of practice through a business entity that is a partnership, at least one of the partners shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. In the case of a single professional surveyor partner, all drawings or reports issued by or for the partnership shall bear the seal of the professional surveyor partner who shall be responsible for the work. In the case of practice through a business entity other than a partnership, services or work involving the practice of surveying may be offered through the business entity; provided the person in responsible charge of the activities of the business entity that constitute the practice of surveying is a professional surveyor who has authority to bind the business entity by contract; and further provided that all drawings or reports that are involved in such practice, or that are issued by or for the business entity, bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work when issued.

C. In the case of practice through a business entity offering or providing services or work involving the practice of surveying, an authorized company officer and the professional surveyor who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional surveyor or authorized company officer, the affidavit shall be promptly revised and resubmitted to the board.

D. An individual or business entity may not use or assume a name involving the terms "surveyor", "professional surveyor" or "surveying" or any modification or derivative of those terms unless that individual or business entity is qualified to practice surveying in accordance with the requirements of the Engineering and Surveying Practice Act.

E. For all contracts and agreements for professional surveying services, the surveying services contractor shall provide a written statement indicating:

(1) the minimum terms and conditions of professional liability insurance coverage, including limits and exceptions; or

(2) the absence of professional liability insurance coverage.

History: 1978 Comp., § 61-23-27.9, enacted by Laws 1993, ch. 218, § 30; 1999, ch. 259, § 25; 2005, ch. 69, § 13; 2017, ch. 42, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2017 amendment, effective July 1, 2017, required, in the case of professional surveyors practicing through a business entity, an authorized company officer and its professional surveyor to place on file with the board a signed affidavit as prescribed by board rule; in Subsection A, after each occurrence of "No", deleted "firm, partnership, corporation or joint stock association" and added "business entity", and after "except as provided in", deleted "that" and added "the Engineering and Surveying Practice"; in Subsection B, after "the Engineering and Surveying Practice Act as individuals", deleted "partners", after "or through", deleted "joint stock associations or corporations" and added "a business entity", after "In the case of practice through a", added "business entity that is a", after "a professional surveyor pursuant to", deleted "that" and added "the Engineering and Surveying Practice"; after "In the case of practice through a", deleted "joint stock association or corporation" and added "business entity other than a partnership", after "may be offered through the", deleted "joint stock association or corporation" and added "business entity", after "charge of the activities of the", deleted "joint stock association or

corporation" and added "business entity", after "constitute the practice", added "of surveying", after "authority to bind", deleted "such joint stock association or corporation" and added "the business entity", after "involved in such practice", added "or that are", and after "issued by or for the", deleted "joint stock association or corporation" and added "business entity"; added a new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively; and in Subsection D, after "An individual", deleted "firm, partnership, corporation or joint stock association" and added "or business entity", after "unless that individual", deleted "firm, partnership, corporation or joint stock association" and added "or business entity", and after "in accordance with the requirements", deleted "in this section" and added "of the Engineering and Surveying Practice Act".

The 2005 amendment, effective June 17, 2005, provides that in all contract or agreements for professional surveying services, the surveying services contractor shall provide a written statement indicating the minimum terms and conditions of professional liability insurance coverage or the absence of professional liability insurance coverage.

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" in the first sentence of Subsection A, and made minor stylistic changes throughout the section.

61-23-27.10. Surveying exemptions. (Repealed effective July 1, 2024.)

An employee of a business entity who performs only the surveying services involved in the operation of the business entity's business shall be exempt from the provisions of the Engineering and Surveying Practice Act; provided that neither the employee nor the business entity offers surveying services to the public; and provided further that the surveying services performed do not include any determination, description, portraying, measuring or monumentation of the boundaries of a tract of land. Performance of surveying on public works projects pursuant to Section 61-23-27.13 NMSA 1978 constitutes surveying services to the public and is not exempt.

History: 1978 Comp., § 61-23-27.10, enacted by Laws 1993, ch. 218, § 31; 1999, ch. 259, § 26; 2017, ch. 42, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2017 amendment, effective July 1, 2017, clarified that the performance of surveying on public works projects is not exempt from the Engineering and Surveying Practice Act; after "An employee of a", deleted "firm, association or corporation" and added "business entity", after "involved in the operation of the", deleted "employers" and added "business entity's", after "the employee nor the", deleted "employer" and added "business entity",

after "and provided", added "further", and added the last sentence.

The 1999 amendment, effective June 18, 1999, deleted the former subsection designations; deleted former Subsection A, which read "Officers and employees of the government of the United States engaged within New Mexico in the practice of surveying for the government, provided that they offer no surveying services to the public, and further provided that services do not affect the public, shall be exempt from the Engineering and Surveying Practice Act"; substituted "An employee of a firm" for "A surveyor employed by the firm" at the beginning of the section; and added the second proviso at the end of the section.

61-23-27.11. Surveying; violations; disciplinary actions; penalties; reissuance of licenses. (Repealed effective July 1, 2024.)

A. In accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the board may suspend, refuse to renew or revoke the license, impose a fine not to exceed seven thousand five hundred dollars (\$7,500), place on probation for a specific period of time with specific conditions or reprimand a professional surveyor who is found by the board to have:

- (1) practiced or offered to practice surveying in New Mexico in violation of the Engineering and Surveying Practice Act;
- (2) attempted to use the license of another;
- (3) given false or forged evidence to the board or to a board member for obtaining a license;

- (4) falsely impersonated another licensee of like or different name;
- (5) attempted to use an expired, suspended or revoked license;
- (6) falsely purported to be a professional surveyor by claim, sign, advertisement or letterhead;
- (7) violated the rules of professional responsibility for professional surveyors adopted and promulgated by the board;
- (8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board pursuant to the Engineering and Surveying Practice Act;
- (9) been convicted of a felony; or
- (10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules adopted by the board.

B. The board may by rule and in accordance with the Uniform Licensing Act establish the guidelines for the disposition of disciplinary cases involving specific types of violations. Guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

C. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

D. A person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against a professional surveyor. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the executive director of the board. No action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall such an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges shall be referred to the professional surveying committee, acting for the board, or to the board. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the surveying committee, acting for the board, or by the board.

E. Persons making charges shall not be subject to civil or criminal suits if the charges are made in good faith and are not frivolous or malicious.

F. The board or a board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

G. The board, for reasons it deems sufficient, may reissue a license to a person whose license has been revoked or suspended; provided that a majority of the members of the surveying committee, acting for the board, or of the board votes in favor of reissuance. A new license bearing the original license number to replace a revoked, lost, destroyed or mutilated license may be issued subject to the rules of the board with payment of a fee determined by the board.

H. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than seven thousand five hundred dollars (\$7,500) or by imprisonment of no more than one year, or both.

I. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.

J. The practice of surveying in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county in which the violation occurs.

History: 1978 Comp., § 61-23-27.11, enacted by Laws 1993, ch. 218, § 32; 1999, ch. 259, § 27; 2005, ch. 69, § 14; 2012, ch. 46, § 13; 2017, ch. 42, § 16; 2022, ch. 39, § 88.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the state board of licensure for professional engineers and professional surveyors is required to follow the provisions of the Uniform Licensing Act in disciplinary matters; in Subsection A, added "In accordance with the Uniform Licensing Act"; and in Subsection B, after "The

board may by rule", added "and in accordance with the Uniform Licensing Act".

The 2017 amendment, effective July 1, 2017, removed the provision requiring the professional surveying committee to prepare and adopt rules of professional responsibility for professional surveyors; in Subsection D, after "misconduct against a", deleted "licensee" and added "professional surveyor", and after "Uniform Licensing Act by the", deleted "professional"; in Subsection G, after "a majority of the members of the", deleted "professional"; and deleted Subsection H and redesignated former Subsections I through K as Subsections H through J, respectively.

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; increased the fine; eliminated requirements for the publication and amendment of rules; in the title, after "reissuance of", deleted "certificates" and added "licenses"; in Subsections A and G, substituted "license" for "certificate of licensure"

throughout the sections; in Subsection A, after "not to exceed", deleted "five thousand dollars (\$5,000)" and added "seven thousand five hundred dollars (\$7,500)"; in Subsection H, deleted former language which provided for the publication and amendment of rules of professional responsibility; and in Subsection I, after "not more than", deleted "five thousand dollars (\$5,000)" and added "seven thousand five hundred dollars (\$7,500)".

The 2005 amendment, effective June 17, 2005, provided in Subsection H that the professional surveying committee shall adopt, revise and amend rules of professional responsibility for the professional surveyors.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes throughout the section; inserted "or settled informally" in the last sentence of Subsection D; and made minor stylistic changes throughout the section.

61-23-27.12. Surveying; professional development. (Repealed effective July 1, 2024.)

The board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure of the board.

History: 1978 Comp., § 61-23-27.12, enacted by Laws 1993, ch. 218, § 33.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

61-23-27.13. Surveying; public work. (Repealed effective July 1, 2024.)

It is unlawful for the state or any of its political subdivisions or any person to engage in the construction of any public work involving surveying unless the surveying is under the responsible charge of a licensed professional surveyor.

History: 1978 Comp., § 61-23-27.13, enacted by Laws 1993, ch. 218, § 34; 1999, ch. 259, § 28; 2017, ch. 42, § 17.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2017 amendment, effective July 1, 2017, made it unlawful for any person to engage in the construction of

any public work involving surveying unless the surveying is under the responsible charge of a licensed professional surveyor; and after "political subdivisions", added "or any person".

The 1999 amendment, effective June 18, 1999, substituted "licensed professional" for "registered professional".

61-23-27.14. Surveying; public officer; licensure required. (Repealed effective July 1, 2024.)

No person except a licensed professional surveyor shall be eligible to hold any responsible office or position for the state or any political subdivision of the state that requires the performance or responsible charge of surveying work.

History: 1978 Comp., § 61-23-27.14, enacted by Laws 1993, ch. 218, § 35; 1999, ch. 259, § 29.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" in the section heading and "licensed" for "registered" in the section.

61-23-27.15. Authority to investigate; civil penalties for unlicensed persons; surveying. (Repealed effective July 1, 2024.)

A. The board may investigate and initiate a hearing on a complaint against a person who does not have a license, who is not exempt from the Engineering and Surveying Practice Act and who acts in the capacity of a professional surveyor within the meaning of the Engineering and Surveying Practice Act. A valid license is required for a person to act as a professional surveyor or to solicit or purport to perform work involving the practice of surveying.

B. If after the hearing the board determines that based on the evidence the person committed a violation under the Engineering and Surveying Practice Act, it shall, in addition to any other sanction, action or remedy, issue an order that imposes a civil penalty up to seven thousand five hundred dollars (\$7,500) per violation.

C. In determining the amount of the civil penalty it imposes, the board shall consider:

- (1) the seriousness of the violation;
- (2) the economic benefit to the violator that was generated by the violator's commission of the violation;
- (3) the violator's history of violations; and
- (4) any other considerations the board deems appropriate.

D. A person aggrieved may appeal a decision made or an order issued pursuant to Subsection B of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

E. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Engineering and Surveying Practice Act is a misdemeanor and upon conviction the person shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Conviction shall be grounds for further action against the person by the board and for judicial sanctions or relief, including a petition for injunction.

History: Laws 2003, ch. 233, § 5; 2012, ch. 46, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2012 amendment, effective July 1, 2012, provided that a valid license is required to act as an surveyor or to

seek work involving the practice of surveying; increased the penalty; in Subsection A, added the last sentence; and in Subsection B, after "penalty up to", deleted "five thousand dollars (\$5,000)" and added "seven thousand five hundred dollars (\$7,500)".

61-23-28. Reference marks; removal or obliteration; replacement. (Repealed effective July 1, 2024.)

When it becomes necessary by reason of the construction of public or private works to remove or obliterate any triangulation station, benchmark, corner, monument, stake, witness mark or other reference mark, it shall be the duty of the person in charge of the work to cause to be established by a licensed surveyor one or more permanent reference marks, which shall be plainly marked as witness corners or reference marks as near as practicable to the original mark and to record a map, field notes or both with the county clerk of the county wherein located, showing clearly the position of the marks established with reference to the position of the original mark. The surveys or measurements made to connect the reference marks with the original mark shall be of at least the same order of precision as the original survey.

History: Laws 1987, ch. 336, § 28; 1999, ch. 259, § 30; 2011, ch. 56, § 26.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-28 NMSA 1978, as amended by Laws 1983, ch. 111, § 1, relating to public work, effective June 19, 1987, and enacted a new section.

The 2011 amendment, effective December 31, 2012, removed the county surveyor as a person with whom maps and field notes may be recorded.

The 1999 amendment, effective June 18, 1999, substituted "licensed surveyor" for "registered surveyor" in the first sentence.

61-23-28.1. Repealed.

Repeals. — Laws 1999, ch. 259, § 35 repealed 61-23-28.1 NMSA 1978, as amended by Laws 1997, ch. 80, § 1, relating to recording of surveys, effective June 18, 1999.

For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

61-23-28.2. Surveying; record of survey. (Repealed effective July 1, 2024.)

A. For those surveys that do not create a division of land but only show existing tracts of record, except in the instance of remonumentation as specified in the board's minimum standards for boundary surveys, within sixty calendar days of the completion of the survey, a professional

surveyor shall cause to be recorded at the office of the county clerk a survey entitled "boundary survey" that shall:

(1) contain a printed certification of the professional surveyor stating that "this is a boundary survey of an existing tract", or existing tracts, if appropriate, and that "it is not a land division or subdivision as defined in the New Mexico Subdivision Act";

(2) identify all tracts by the uniform parcel code designation or other designation established by the county assessor, if applicable;

(3) meet the minimum standards for surveying in New Mexico as established by the board; and

(4) not exceed a size of eighteen inches by twenty-four inches and be at least eight and one-half inches by eleven inches or as required by the local governing authority.

B. Fees for recording a boundary survey shall be in conformance with Section 14-8-15 NMSA 1978.

C. For those surveys that create a division of land, the survey shall be completed in conformity with the board's minimum standards and in conformity with the New Mexico Subdivision Act and any applicable local subdivision ordinances. Filing procedures shall be prescribed in the board's minimum standards. The record of survey required to be filed and recorded pursuant to this subsection shall be recorded at the office of the county clerk within sixty calendar days after completion of the survey or approval by the governing authority.

History: Laws 1999, ch. 259, § 34; 2011, ch. 134, § 20; 2017, ch. 42, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2017 amendment, effective July 1, 2017, allowed the local governing authority to determine the size of "boundary surveys" that are recorded at the office of the county clerk; and in Subsection A, Paragraph A(4), after "one-half inches by eleven inches", added "or as required by the local governing authority".

The 2011 amendment, effective July 1, 2011, eliminated the requirement that boundary surveys consist of two black-line copies; imposed the fees provided for in Section 14-8-15 NMSA 1978; and eliminated the requirement

that county clerks keep an indices of boundary survey plats and land division plats.

ANNOTATIONS

Authority to review survey plats prior to recording. — A county clerk has limited statutory authority to independently review the contents of survey plats presented for recordation to determine the threshold question whether the survey accomplishes a subdivision of land and the county clerk may enlist the aid of county zoning and planning officials in conducting this review. *Valdez v. Vigil*, 2007-NMCA-031, 141 N.M. 316, 154 P.3d 691, cert. denied, 2006-NMCERT-011, 140 N.M. 846 (decided under prior law).

61-23-29. Repealed.

Repeals. — Laws 1993, ch. 218, § 41 repealed former 61-23-29 NMSA 1978, as enacted by Laws 1987, ch. 336, § 29, concerning the restoration or reestablishment of

monuments, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

61-23-29.1. Repealed.

Repeals. — Laws 1987, ch. 336 repealed former 61-23-29.1 NMSA 1978, as enacted by Laws 1979, ch. 363, § 26,

relating to licensure under prior laws, effective June 19, 1987.

61-23-30. Right of entry on public and private property; responsibility. (Repealed effective July 1, 2024.)

The engineers and surveyors of the United States and licensed professional engineers and surveyors of the state shall have the right to enter upon the lands and waters of the state and of private persons and of private and public corporations within the state for the purpose of making surveys, inspections, examinations and maps, subject to responsibility for actual damage to crops or other property or for injuries resulting from negligence or malice caused on account of that entry.

History: Laws 1987, ch. 336, § 30; 1999, ch. 259, § 31.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-30 NMSA 1978, as amended by Laws 1983, ch. 111, § 2, relating to termination of agency life

and delayed repeal, effective June 19, 1987, and enacted a new section.

The 1999 amendment, effective June 18, 1999, substituted "licensed professional" for "registered professional".

Compiler's notes. — Laws 1987, ch. 333, § 10 purported to amend former 61-23-30 NMSA 1978, as amended by Laws 1981, ch. 241, § 31, relating to termination of

agency life, but was not given effect due to the repeal and reenactment by Laws 1987, ch. 336, § 30.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 75 Am. Jur. 2d Trespass § 103, 104.
87 C.J.S. Trespass §§ 52 to 54.

61-23-31. Licensure under prior laws. (Repealed effective July 1, 2024.)

Any person holding a valid license as a professional engineer, professional surveyor, professional engineer and surveyor or certification as an engineer intern or surveyor intern granted by the board pursuant to any prior law of New Mexico shall not be required to make a new application or to submit to an examination, but shall be entitled to the renewal of licensure upon the terms and conditions of the Engineering and Surveying Practice Act [this article].

History: Laws 1987, ch. 336, § 31; 1993, ch. 218, § 37; 1999, ch. 259, § 32.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted "valid license" for "valid registration" and "renewal of licensure" for "renewal of such registration".

The 1993 amendment, effective July 1, 1993, substituted "professional surveyor, professional engineer and surveyor or certification as an engineer intern, or surveyor intern" for "professional land surveyor, land surveyor or professional engineer and land surveyor or certification as an engineering intern, engineer-in-training or land surveying intern".

61-23-31.1. Good samaritan. (Repealed effective July 1, 2024.)

A. A professional engineer or professional surveyor who voluntarily, without compensation, at the request of a state or local public official acting in an official capacity, provides aircraft structure, structural, aeronautical, electrical, mechanical, other engineering services or surveying at the scene of a declared national, state or local emergency caused by a major earthquake, hurricane, tornado, fire, explosion, flood, collapse or other similar disaster or catastrophic event, such as a terrorist act, shall not be liable for any personal injury, wrongful death, property damage or other loss caused by the engineer's or surveyor's acts, errors or omissions in the performance of any surveying or engineering services for any structure, building, piping or other engineered system, publicly or governmentally owned.

B. The immunity provided shall apply only to a voluntary engineering or surveying service that occurs within thirty days of the emergency, disaster or catastrophic event, unless extended by an executive order issued by the governor under the governor's emergency executive powers. Nothing in this section shall provide immunity for wanton, willful or intentional misconduct.

History: 1978 Comp., § 61-23-31.1, enacted by Laws 1993, ch. 218, § 38; 2005, ch. 69, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-23-32 NMSA 1978.

The 2005 amendment, effective June 17, 2005, adds aircraft structure and aeronautical services to the list of services that professional engineers and professional surveyors may provide without incurring liability and includes terrorists acts as catastrophic events.

61-23-32. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The state board of licensure for professional engineers and professional surveyors is terminated on July 1, 2023 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Engineering and Surveying Practice Act until July 1, 2024. Effective July 1, 2024, the Engineering and Surveying Practice Act is repealed.

History: Laws 1987, ch. 336, § 32; 1993, ch. 218, § 39; 1999, ch. 259, § 33; 2005, ch. 208, § 16; 2011, ch. 30, § 5; 2012, ch. 46, § 16; 2017, ch. 42, § 19; 2017, ch. 52, § 7.

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024" in two places.

Laws 2017, ch. 42, § 19, effective July 1, 2017, and Laws 2017, ch. 52, § 7, effective June 16, 2017, enacted identical amendments to this section. The section was set out as amended by Laws 2017, ch. 52, § 7. *See* 12-1-8 NMSA 1978.

The 2012 amendment, effective July 1, 2012, added the reference to professional surveyors and in the first sentence, after "engineers and" added "professional".

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and "July 1, 2005" for "July 1, 1999" in the first sentence, and substituted "July 1, 2006" for "July 1, 2000" in the last two sentences.

The 1993 amendment, effective July 1, 1993, substituted "1999" for "1993" in the first sentence and "2000" for "1994" in the second and third sentences.

61-23-33. Notice of boundary survey; certain land grants. (Repealed effective July 1, 2024.)

A. If a boundary survey of property is conducted within or bordering the common lands of a community land grant governed and operating pursuant to Chapter 49, Article 6, 7, 8 or 10 NMSA 1978, the surveyor shall give written notice by certified mail to the board of trustees or commissioners of the affected land grant prior to recording the boundary survey or plat with the county clerk. The notice shall indicate where and when the boundary survey will be or was conducted.

B. The board of trustees or commissioners of a community land grant governed and operating pursuant to Chapter 49, Article 6, 7, 8 or 10 NMSA 1978 shall record with the county clerk of the county within which the land grant is located the address and contact information of the appropriate officer of the board or commission to which notice shall be given pursuant to Subsection A of this section. Any change in address or contact information shall be updated and recorded as soon as practicable to ensure that timely notice may be accomplished by certified mail.

C. A surveyor shall give proof of the notice required by Subsection A of this section by having the tracking number of the certified mailing and the address of the land grant as recorded with the county clerk acknowledged and recorded on the boundary survey or plat. A boundary survey or plat recorded pursuant to Section 61-23-28.2 NMSA 1978 without proof of the notice required by Subsection A of this section shall not be considered a valid filing or recording of the boundary survey or plat.

History: Laws 2010, ch. 6, § 1.

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Effective dates. — Laws 2010, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

61-23-34. Repealed.

Repeals. — Laws 2013, ch. 3, § 1 repealed 61-23-34 NMSA 1978, as enacted by Laws 2012, ch. 46, § 15, relating to notice of boundary surveys for certain land grants,

effective March 7, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

61-23-35. Engineering and surveying scholarship program. (Repealed effective July 1, 2024.)

A. The board may establish an "engineering and surveying scholarship program" that provides strategies to enhance recruitment and retention of New Mexico professional engineers and professional surveyors, increase career and educational opportunities and improve interaction with the engineering and surveying professions and institutions of higher education. The program may provide direct educational and training scholarships through qualified New Mexico educational institutions to candidates for the engineering and surveying professions willing to reside and practice in New Mexico in an amount not to exceed annually one hundred thousand dollars (\$100,000) in the aggregate.

B. The board may request and utilize appropriations to establish, implement and maintain the scholarship program. Any appropriation shall be deposited in the engineering and surveying scholarship fund.

History: Laws 2019, ch. 220, § 1.

Effective dates. — Laws 2019, ch. 220 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-23-36. Engineering and surveying scholarship fund created. (Repealed effective July 1, 2024.)

The "engineering and surveying scholarship fund" is created in the state treasury to support the engineering and surveying scholarship program. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Any income earned on investment of the fund shall remain in the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the board, and money in the fund is appropriated to the board to carry out the purposes of the engineering and surveying scholarship program. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers approved by the chair and signed by the executive director of the board.

History: Laws 2019, ch. 220, § 2.

Effective dates. — Laws 2019, ch. 220 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ARTICLE 24

Hearing Aid Dealers and Fitters

(Repealed by Laws 1979, ch. 349, § 20.)

61-24-1 to 61-24-21. Repealed.

Repeals. — Laws 1979, ch. 349, § 20, repeals 61-24-1 to 61-24-21 NMSA 1978, relating to hearing aid dealers and

fitters. For present provisions, see 61-14B-1 to 61-14B-25 NMSA 1978.

ARTICLE 24A

Hearing Aid Dispensers

(Repealed by Laws 1996, ch. 57, § 27.)

61-24A-1 to 61-24A-21. Repealed.

Repeals. — Laws 1996, ch. 57, § 27, repeals 61-24A-1 through 61-24A-21 NMSA 1978, as enacted and amended by Laws 1979, ch. 349, §§ 1 to 15, 17, 18 and Laws 1991, ch. 46, §§ 1 to 12, relating to the Hearing Aid Act, effective July 1, 1996. For provisions of former sections, see 1993 Replacement Pamphlet. For present comparable provisions, see Chapter 61, Article 14B NMSA 1978.

Compiler's notes. — Laws 1996, ch. 51, § 13, effective March 5, 1996, amended § 61-24A-21 NMSA 1978. However, Laws 1996, ch. 57, § 27, effective July 1, 1996, repeals that section. Thus, the amendment to 61-24A-21 NMSA 1978 is not set out.

ARTICLE 24B

Landscape Architects

Sec.

- 61-24B-1. Short title. (Repealed effective July 1, 2026.)
- 61-24B-2. Purpose of act. (Repealed effective July 1, 2026.)
- 61-24B-3. Definitions. (Repealed effective July 1, 2026.)
- 61-24B-4. Registration required. (Repealed effective July 1, 2026.)
- 61-24B-5. Exemptions. (Repealed effective July 1, 2026.)
- 61-24B-6. Board created; members; qualifications; terms; vacancies; removal. (Repealed effective July 1, 2026.)
- 61-24B-7. Board; powers and duties. (Repealed effective July 1, 2026.)
- 61-24B-8. Qualifications for registration. (Repealed effective July 1, 2026.)
- 61-24B-8.1. Qualifications for certification as landscape architect in training. (Repealed effective July 1, 2026.)
- 61-24B-9. Registration of landscape architects; examinations; exemptions; expedited registration. (Repealed effective July 1, 2026.)
- 61-24B-9.1. Inactive status. (Repealed effective July 1, 2026.)

Sec.

- 61-24B-9.2. Certification as landscape architect in training; examination. (Repealed effective July 1, 2026.)
- 61-24B-10. Other licensing provisions. (Repealed effective July 1, 2026.)
- 61-24B-11. Fees. (Repealed effective July 1, 2026.)
- 61-24B-12. Denial, suspension, revocation and reinstatement of certificate of registration. (Repealed effective July 1, 2026.)
- 61-24B-13. Criminal offender's character evaluation. (Repealed effective July 1, 2026.)
- 61-24B-14. Landscape architects fund created; disposition; method of payment. (Repealed effective July 1, 2026.)
- 61-24B-15. Board; rules. (Repealed effective July 1, 2026.)
- 61-24B-16. Enforcement. (Repealed effective July 1, 2026.)
- 61-24B-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2026.)

61-24B-1. Short title. (Repealed effective July 1, 2026.)

Chapter 61, Article 24B NMSA 1978 may be cited as the "Landscape Architects Act".

History: Laws 1985, ch. 151, § 1; 1998, ch. 23, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 1998 amendment, effective March 5, 1998, substituted "Chapter 61, Article 24B NMSA 1978" for "This act" at the beginning of the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 87 to 89.
6 C.J.S. Architects §§ 2, 3, 7.

61-24B-2. Purpose of act. (Repealed effective July 1, 2026.)

The purpose of the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978] is to ensure public safety and to promote quality performance by registration of landscape architects.

History: Laws 1985, ch. 151, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

61-24B-3. Definitions. (Repealed effective July 1, 2026.)

As used in the Landscape Architects Act [61-24B-1 NMSA 1978]:

- A. "board" means the board of landscape architects;
- B. "general administration of a construction contract" means the interpretation of drawings and specifications, the establishment of standards of acceptable workmanship and the periodic observation of construction to facilitate consistency with the general intent of the construction documents;
- C. "landscape architect" means an individual registered under the Landscape Architects Act to practice landscape architecture;
- D. "landscape architect in training" means an individual certified under the Landscape Architects Act who is actively pursuing completion of the requirements for licensure pursuant to that act; and
- E. "landscape architecture" means the art, profession or science of designing land improvements, including consultation, investigation, research, design, preparation of drawings and specifications and general administration of contracts. Nothing contained in this definition shall be construed as authorizing a landscape architect to engage in the practice of architecture, engineering or land surveying as defined by Chapter 61, Articles 15 and 23 NMSA 1978.

History: Laws 1985, ch. 151, § 3; 2001, ch. 155, § 1; 2007, ch. 126, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, adds the definition of "landscape architect in training".

The 2001 amendment, effective June 15, 2001, in Subsection D, substituted "landscape architecture" means

the art, profession or science of designing land improvements" for "landscape architectural services" means the practice of landscape architecture"; deleted Paragraphs (1), (2) and (3) that listed the dominant purposes of the services of landscape architecture; and substituted "Chapter 61, Articles 15 and 23 NMSA 1978" for "Sections 61-15-2 and 61-23-6 NMSA 1978".

61-24B-4. Registration required. (Repealed effective July 1, 2026.)

No person shall practice landscape architecture or represent himself as a landscape architect unless he has a certificate of registration issued pursuant to the Landscape Architects Act [Chapter 61, Article 24B NMSA 1978].

History: Laws 1985, ch. 151, § 4; 2001, ch. 155, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 2001 amendment, effective June 15, 2001, substituted "shall practice landscape architecture" for "practice as a landscape architect".

61-24B-5. Exemptions. (Repealed effective July 1, 2026.)

A. The following shall be exempt from the provisions of the Landscape Architects Act [61-24B-1 NMSA 1978] as long as they do not hold themselves out as landscape architects or use the term "landscape architect" without being registered pursuant to the Landscape Architects Act:

(1) landscape architects who are not legal residents of or who have no established place of business in this state who are acting as consulting associates of a landscape architect registered under the provisions of the Landscape Architects Act; provided that the nonresident landscape architect meets equivalent registration qualifications in the landscape architect's own state or country;

(2) landscape architects acting solely as officers or employees of the United States; and

(3) a person making plans for a landscape associated with a single-family residence or a multifamily residential complex of four units or less except when it is part of a larger complex.

B. Nothing in the Landscape Architects Act is intended to limit, interfere with or prevent a professional architect, engineer or land surveyor from engaging in landscape architecture within the limits of the architect's, engineer's or land surveyor's licensure.

C. Nothing in the Landscape Architects Act is intended to limit, interfere with or prevent the landscape architects in training, drafters, students, clerks or superintendents and other employees of registered landscape architects from acting under the instructions, control or supervision of the landscape architect or to prevent the employment of superintendents on the construction, enlargement or alterations of landscape improvements or any appurtenances thereto or to prevent such superintendents from acting under the immediate personal supervision of landscape architects by whom the plans and specifications of any landscape architectural services were prepared.

History: Laws 1985, ch. 151, § 5; 1999, ch. 272, § 31; 2001, ch. 155, § 3; 2007, ch. 126, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, provides that the Landscape Architects Act does not prevent landscape architects in training from acting under the supervision of a landscape architect.

The 2001 amendment, effective June 15, 2001, added the Subsection A designation to the first paragraph and redesignated former Subsections A and B as Paragraphs A(1) and A(2); deleted "or any interstate railroad system; and" from the end of present Paragraph A(2); deleted "landscape

designers, land planners, agriculturalists, soil conservationists, agronomists, horticulturists, foresters, tree experts, arborists, gardeners, contract landscape caretakers, landscape nurserymen, graders or contractors, or cultivators of land and any person making plans for property owned by himself" from the beginning of former Subsection C; inserted Paragraph A(3) and the Subsection designations B and C; and deleted "registered" preceding "landscape architect" in two places in present Subsection C.

The 1999 amendment, effective June 18, 1999, deleted "resident" following "consulting associates of a" in Subsection A.

61-24B-6. Board created; members; qualifications; terms; vacancies; removal. (Repealed effective July 1, 2026.)

A. The "board of landscape architects" is created. The board is administratively attached to the regulation and licensing department. The board shall consist of five members, three of whom shall

be landscape architects. The landscape architect members shall have been registered as landscape architects for at least five years. The two public members shall represent the public and shall not have been licensed as landscape architects or have any significant financial interest, direct or indirect, in the occupation regulated.

B. The members of the board shall be appointed by the governor for staggered terms of three years, and appointments shall be made in a manner that the terms of board members expire on June 30. The landscape architect members of the board shall be appointed from lists submitted to the governor by the New Mexico chapter of the American society of landscape architects. A vacancy shall be filled by appointment by the governor for the unexpired term and shall be filled by persons having similar qualifications to those of the member being replaced. Board members shall serve until their successors have been appointed and qualified.

C. The board shall meet within sixty days of the beginning of a fiscal year and elect from its membership a chairman and vice chairman. The board shall meet at other times as it deems necessary or advisable or as deemed necessary and advisable by the chairman or a majority of its members or the governor, but in no event less than twice a year. Reasonable notice of all meetings shall be given in the manner prescribed by the board. A majority of the board shall constitute a quorum at any meeting or hearing.

D. The governor may remove a member from the board for neglect of a duty required by law, for incompetence, for improper or unprofessional conduct as defined by board rule or for any reason that would justify the suspension or revocation of his registration to practice landscape architecture.

E. A board member shall not serve more than two consecutive full terms, and a member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member, unless excused for reasons set forth in board rules.

F. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 1985, ch. 151, § 6; 1991, ch. 189, § 23; 2001, ch. 155, § 4; 2003, ch. 408, § 24.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A.

The 2001 amendment, effective June 15, 2001, in Subsection A, changed the qualifications required for the three landscape architects on the board, who were formerly required to be registered landscape architects with at least ten years of experience, and two of which had to be registered within six months of the effective date of the Landscape Architects Act; in Subsection B, deleted the first sentence that read "Upon enactment of the Landscape Architects Act, appointments shall be made by

the governor.", inserted "by the governor" following "appointed"; and substituted "beginning of a fiscal year" for "effective date of the Landscape Architects Act" in Subsection C.

The 1991 amendment, effective June 14, 1991, in the second sentence in Subsection A, substituted "three shall be registered" for "four of whom shall be registered", "two landscape architects" for "four landscape architects", and "two shall represent" for "one of whom shall represent" and made related stylistic changes and, in Subsection B, deleted "in such manner that two members shall be appointed for one-year terms, two members shall be appointed for two-year terms and one member shall be appointed for a three-year term" at the end of the first sentence and deleted "Thereafter" at the beginning of the second sentence.

61-24B-7. Board; powers and duties. (Repealed effective July 1, 2026.)

The board shall:

A. promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to implement the provisions of the Landscape Architects Act;

B. provide for the examination, registration and re-registration of applicants;

C. adopt and use a seal;

D. administer oaths and take testimony on matters within the board's jurisdiction;

E. grant, deny, renew, suspend or revoke certificates of registration to practice landscape architecture in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for any cause stated in the Landscape Architects Act;

F. grant, deny, renew, suspend or revoke landscape architect in training certificates in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Landscape Architects Act;

G. conduct hearings upon charges relating to discipline of a registrant or the denial, suspension or revocation of a certificate of registration; and

H. in cooperation with the state board of examiners for architects and the state board of licensure for professional engineers and surveyors, create a joint standing committee to be known as the "joint practice committee" to safeguard life, health and property and to promote the public welfare. The committee shall promote and develop the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of this committee and its powers and duties shall be in accordance with identical resolutions adopted by each board.

History: Laws 1985, ch. 151, § 7; 1987, ch. 301, § 4; 2001, ch. 155, § 5; 2003, ch. 408, § 25; 2007, ch. 126, § 3; 2022, ch. 39, § 89.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

Cross references. — As to the duties of the state board of examiners for professional architects, see 61-15-4 NMSA 1978.

As to the powers of the state board of registration for professional engineers and land surveyors, see 61-23-10 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of landscape architects is required to follow the provisions of the State Rules Act when promulgating rules; and in Subsection A, after "promulgate rules", added "in accordance with the State Rules Act to implement".

The 2007 amendment, effective June 15, 2007, adds new Subsection F to provide powers and duties of the board for architect in training certification.

The 2003 amendment, effective July 1, 2003, deleted former Subsection B, regarding employment of persons necessary to carry out the provisions of the Act, and redesignated the subsequent subsections accordingly.

The 2001 amendment, effective June 15, 2001, in Subsection H, substituted "in cooperation" for "participate", "state board of licensure" for "state board of registration", "create" for "in creating", "the 'joint practice committee'" for "the 'architect-engineer-landscape architect joint practice committee'", and substituted the current goals of the committee beginning "to safeguard the life, health and property" and ending with "concerning the professions" for "to resolve disputes concerning these professions".

61-24B-8. Qualifications for registration. (Repealed effective July 1, 2026.)

A person desiring to become registered as a landscape architect shall make application to the board on a written form and in such manner as the board prescribes, pay all required application fees and certify and furnish evidence to the board that the applicant:

A. has graduated from an accredited program in landscape architecture at a school, college or university and has a minimum of two years of practical experience acceptable to the board, at least one year of which shall be under the supervision of a landscape architect;

B. has graduated from a nonaccredited program of landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum and has a minimum of four years of practical experience acceptable to the board, at least one year of which shall be under the supervision of a landscape architect;

C. has graduated from a program in a field related to landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum and has a minimum of five years of practical experience acceptable to the board, at least one year of which shall be under the supervision of a landscape architect; or

D. has a minimum of ten years of practical experience in landscape architectural work that is acceptable to the board, at least one year of which shall be under the supervision of a landscape architect, provided that:

(1) each satisfactorily completed year of study in an accredited program of landscape architecture may be accepted in lieu of one year of practical experience required under this subsection; or

(2) a baccalaureate degree from a school, college or university may be accepted in lieu of two years of practical experience required under this subsection.

History: Laws 1985, ch. 151, § 8; 2001, ch. 155, § 6; 2007, ch. 126, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, changes the education and experience required to qualify for registration as a landscape architect.

The 2001 amendment, effective June 15, 2001, in Subsections A and B, deleted "registered" following "supervision of a" and deleted "or a person who becomes a registered landscape architect within one year from the

effective date of the Landscape Architects Act; provided that" preceding "a master's degree"; and inserted "in a related field" following "university" in Paragraphs C(1) and (2).

61-24B-8.1. Qualifications for certification as landscape architect in training. (Repealed effective July 1, 2026.)

A person desiring to be certified as a landscape architect in training shall make application to the board on a written form and in such manner as the board prescribes, pay all required application fees and certify and furnish evidence to the board that the applicant has practical experience in landscape architectural work acceptable to the board and has:

A. graduated from an accredited program in landscape architecture at a school, college or university;

B. graduated from a non-accredited program of landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum; or

C. graduated from a program related to landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum.

History: Laws 2007, ch. 126, § 5.

Effective dates. — Laws 2007, ch. 125, contains no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

61-24B-9. Registration of landscape architects; examinations; exemptions; expedited registration. (Repealed effective July 1, 2026.)

A. Applicants for certificates of registration shall be required to pass the board's examination for landscape architects. An applicant who passes the examination may be issued a certificate of registration to practice as a landscape architect.

B. The board shall conduct examinations of applicants for certificates of registration as landscape architects at least once each year. The examination shall determine the ability of the applicant to use and understand the theory and practice of landscape architecture and may be divided into such subjects as the board deems necessary.

C. An applicant who fails to pass the examination may reapply for the examination if the applicant complies with the rules established by the board.

D. The board shall issue an expedited certificate to practice as a landscape architect without an examination to an applicant who holds a current certificate of registration or license as a landscape architect issued by another licensing jurisdiction if the applicant demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction. The board shall, as soon as practicable but no later than thirty days after an out-of-state registrant or licensee files an application for a license accompanied by required fees, process the application and issue an expedited certificate of registration in accordance with Section 61-1-31.1 NMSA 1978. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept applications for expedited registration and foreign countries from which it will accept applications for expedited licensure. The board shall post on its website the list of disapproved licensing jurisdictions and the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

History: Laws 1985, ch. 151, § 9; 2001, ch. 155, § 7; 2022, ch. 39, § 90.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited registration, provided that

the board of landscape architects shall issue an expedited certificate to practice as a landscape architect without an examination to a person who holds a current certificate of registration or license as a landscape architect issued by another licensing jurisdiction if the applicant demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction, provided that the board shall expedite the issuance of certificates in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are

warranted; in the section heading, added "expedited registration"; and in Subsection D, after "The board", deleted "may" and added "shall", after "issue", deleted "a" and added "an expedited", after "issued by another", deleted "state if the standards of the other state are as stringent as those established by the board and" and added "licensing jurisdiction", after "if the applicant", deleted "meets the qualifications required of a landscape architect in this state", and added the remainder of the subsection.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2001 amendment, effective June 15, 2001, deleted "successfully" preceding "passes" in Subsection A; and deleted Subsection E, regarding the certification of landscape architects in the first year after the effective date of the Landscape Architects Act.

61-24B-9.1. Inactive status. (Repealed effective July 1, 2026.)

A certificate of registration in good standing may be transferred to inactive status upon written request to the board and payment of an annual inactive status fee set by the board. The request shall be made prior to expiration of the certificate of registration. The registrant shall not practice in New Mexico during the time the certificate of registration is inactive. A registrant may reactivate his certificate of registration upon submission of a renewal form provided by the board, the payment of the annual renewal fee for the current year, proof of continuing education units for the period of inactive status and any additional proof of competency required by the board.

History: Laws 1998, ch. 23, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

61-24B-9.2. Certification as landscape architect in training; examination. (Repealed effective July 1, 2026.)

A. Applicants for certification as a landscape architect in training shall be required to pass the board's examination for landscape architect in training. An applicant who passes the examination may be issued a certificate as a landscape architect in training. The certification is intended to demonstrate that the applicant has obtained certain skills in landscape architecture fundamentals and is pursuing a career in landscape architecture.

B. The board shall conduct examinations of applicants for certification as landscape architects in training at least once each year. The examination shall determine the ability of the applicant to use and understand the theory and practice of landscape architecture and may be divided into such subjects as the board deems necessary.

C. An applicant who fails to pass the examination may reapply for the examination if the applicant complies with the rules established by the board.

D. Certification as a landscape architect in training is limited in duration in accordance with the rules established by the board.

History: Laws 2007, ch. 126, § 6.

Effective dates. — Laws 2007, ch. 126, contains no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

61-24B-10. Other licensing provisions. (Repealed effective July 1, 2026.)

A. The board may adopt rules and regulations for continuing education requirements which shall be completed as a condition for renewal of any certificate of registration under the Landscape Architects Act [this article].

B. Each registered landscape architect may obtain the seal authorized by the board, bearing the registrant's name and the legend "Registered Landscape Architect - State of New Mexico". All plans, specifications and reports issued by a registrant shall be stamped with his seal.

History: Laws 1985, ch. 151, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

61-24B-11. Fees. (Repealed effective July 1, 2026.)

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable fees for applications, certificates of registration, certificates as a landscape architect in training, temporary permits, re-registration, inactive status and late registration renewal as follows:

- A. the initial application fee shall be set in an amount not to exceed one hundred dollars (\$100);
- B. the initial certificate of registration fee shall be set in an amount not to exceed three hundred dollars (\$300);
- C. the certificate of registration renewal fee shall be set in an amount not to exceed four hundred dollars (\$400);
- D. the initial and the renewal fee for landscape architect in training certification shall be set in an amount not to exceed two hundred dollars (\$200);
- E. the annual inactive status fee shall be set at one-half the renewal fee for the year; and
- F. the late fee for registration renewal shall be set at an amount not to exceed twice the renewal fee.

History: Laws 1985, ch. 151, § 11; 1998, ch. 23, § 3; 2007, ch. 128, § 7; 2020, ch. 6, § 52.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2007 amendment, effective June 15, 2007, establishes fees for landscape architect in training certification.

The 1998 amendment, effective March 5, 1998, substituted, re-registration, inactive status and late registration renewal" for "and reregistration" in the undesignated paragraph; substituted "one hundred dollars (\$100)" for "fifty dollars (\$50.00)" in Subsection A; substituted "three hundred dollars (\$300)" for "one hundred fifty dollars (\$150); and" in Subsection B; substituted "four hundred dollars (\$400)" for "one hundred dollars (\$100)" in Subsection C; and added Subsections D and E.

61-24B-12. Denial, suspension, revocation and reinstatement of certificate of registration. (Repealed effective July 1, 2026.)

A. The board may refuse to issue or may deny, suspend or revoke any certificate of registration held or applied for under the Landscape Architects Act [this article] in accordance with the procedures set forth in the Uniform Licensing Act [61-1-1 NMSA 1978] upon grounds that the registrant or applicant:

- (1) is guilty of fraud or misrepresentation in the procurement of a certificate of registration;
- (2) is subject to the imposition of any disciplinary action by another state which regulates landscape architects, but not to exceed the period or extent of that action;
- (3) is grossly negligent or incompetent in his practice as a landscape architect;
- (4) has failed to maintain registration as a landscape architect;
- (5) has violated or aided or abetted any person to violate any of the provisions of the Landscape Architects Act or any rules or regulations duly adopted under that act; or
- (6) has engaged in unprofessional conduct.

B. The board may modify any order of revocation, suspension or refusal to issue a certificate of registration and has the discretion to require an examination for any such modification.

History: Laws 1985, ch. 151, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

61-24B-13. Criminal offender's character evaluation. (Repealed effective July 1, 2026.)

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Landscape Architects Act [61-24B-1 NMSA 1978].

History: Laws 1985, ch. 151, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

61-24B-14. Landscape architects fund created; disposition; method of payment. (Repealed effective July 1, 2026.)

A. There is created in the state treasury the "landscape architects fund".

B. All funds received by the board and money collected under the Landscape Architects Act [61-24B-1 NMSA 1978] shall be deposited with the state treasurer, who shall place the money to the credit of the landscape architects fund.

C. All amounts paid into the landscape architects fund shall be subject to the order of the board and shall be used only for the purpose of implementing the provisions of the Landscape Architects Act. All money unexpended or unencumbered at the end of the fiscal year shall remain in the landscape architects fund for use in accordance with the provisions of the Landscape Architects Act.

History: Laws 1985, ch. 151, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

61-24B-15. Board; rules. (Repealed effective July 1, 2026.)

The board shall make rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to implement the provisions of the Landscape Architects Act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

History: Laws 1985, ch. 151, § 15; 2022, ch. 39, § 91.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of landscape architects is required to

follow the provisions of the State Rules Act when promulgating rules; in the section heading, deleted "and regulations"; and after "The board shall make rules", deleted "and regulations necessary" and added "in accordance with the State Rules Act".

61-24B-16. Enforcement. (Repealed effective July 1, 2026.)

A. Violation of any provision of the Landscape Architects Act [61-24B-1 NMSA 1978] is a misdemeanor.

B. The board may bring civil action in any district court to enforce any of the provisions of the Landscape Architects Act.

History: Laws 1985, ch. 151, § 16.

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

Cross references. — As to sentencing for misdemeanors, see 31-19-1 NMSA 1978.

61-24B-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2026.)

The board of landscape architects is terminated on July 1, 2025 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Landscape Architects Act until July 1, 2026. Effective July 1, 2026, the Landscape Architects Act is repealed.

History: Laws 1985, ch. 151, § 18; 1991, ch. 189, § 24; 1997, ch. 46, § 18; 2005, ch. 208, § 17; 2013, ch. 166, § 5; 2019, ch. 168, § 3.

The 2019 amendment, effective July 1, 2019, extended the termination date for the board of landscape architects; and changed "July 1, 2019", to "July 1, 2025", and changed "July 1, 2020", to "July 1, 2026".

The 2013 amendment, effective June 14, 2013, changed the agency termination date from 2013 to 2019, the termination of the operations date from 2014 to 2020, and the repeal date from 2014 to 2020.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

The 1997 amendment substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences. Laws 1997, ch. 46 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

The 1991 amendment, effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

ARTICLE 24C

Interior Designers

- Sec.
- 61-24C-1. Short title. (Repealed effective July 1, 2024.)
- 61-24C-2. Findings. (Repealed effective July 1, 2024.)
- 61-24C-3. Definitions. (Repealed effective July 1, 2024.)
- 61-24C-4. Interior design board created; members; terms; compensation. (Repealed effective July 1, 2024.)
- 61-24C-5. Powers and duties of the board. (Repealed effective July 1, 2024.)
- 61-24C-6. Compensation and expenses. (Repealed effective July 1, 2024.)
- 61-24C-7. Board officers. (Repealed effective July 1, 2024.)
- 61-24C-8. Requirements for licensure. (Repealed effective July 1, 2024.)
- 61-24C-9. License without examination. (Repealed effective July 1, 2024.)

- Sec.
- 61-24C-10. License; issuance; renewal; denial, suspension or revocation. (Repealed effective July 1, 2024.)
- 61-24C-11. License required; penalty. (Repealed effective July 1, 2024.)
- 61-24C-12. Penalties levied by the board. (Repealed effective July 1, 2024.)
- 61-24C-13. Exemptions. (Repealed effective July 1, 2024.)
- 61-24C-14. License fees. (Repealed effective July 1, 2024.)
- 61-24C-15. Disclosure requirements. (Repealed effective July 1, 2024.)
- 61-24C-16. Fund established; disposition; method of payment. (Repealed effective July 1, 2024.)
- 61-24C-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

61-24C-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 24C NMSA 1978 may be cited as the "Interior Designers Act".

History: Laws 1989, ch. 53, § 1; 2000, ch. 4, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2000 amendment, effective February 15, 2000, substituted "Chapter 61, Article 24C NMSA 1978" for "This act".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 4, 5, 14, 34, 35, 39 to 41, 45 to 47, 58 to 62, 70 to 73.
53 C.J.S. Licenses §§ 5, 7, 22, 30, 34 to 40, 50 to 66, 78, 81, 82.

61-24C-2. Findings. (Repealed effective July 1, 2024.)

The legislature finds that it will benefit and protect the citizens of the state to require the licensing of interior designers and prohibit the use of the designation licensed "interior designer" by unlicensed persons.

History: Laws 1989, ch. 53, § 2; 2007, ch. 245, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, prohibits the use of the designation of licensed interior designer by unlicensed persons.

61-24C-3. Definitions. (Repealed effective July 1, 2024.)

As used in the Interior Designers Act [61-24C-1 NMSA 1978]:

- A. "board" means the interior design board;
- B. "interior design" means services that do not necessarily require performance by an architect, such as administering contracts for fabrication, procurement or installation in the implementation of designs, drawings and specifications for any interior design project and consultations,

studies, drawings and specifications in connection with reflected ceiling plans, space utilization, furnishings or the fabrication of nonstructural elements within and surrounding interior spaces of buildings, but specifically excluding mechanical and electrical systems, except for specifications of fixtures and their location within interior spaces; and

C. "licensed interior designer" or "licensed designer" means a person licensed pursuant to the Interior Designers Act.

History: Laws 1989, ch. 53, § 3; 2007, ch. 245, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, defines "licensed interior designer".

61-24C-4. Interior design board created; members; terms; compensation. (Repealed effective July 1, 2024.)

A. There is created the "interior design board". The board shall be administratively attached to the regulation and licensing department. The board shall consist of five members appointed by the governor for staggered terms of three years, appointed in a manner that the term of one member shall expire on December 31, 1990; the terms of two members shall expire on December 31, 1991; and the terms of the last two members shall expire on December 31, 1992. Thereafter, members shall be appointed for terms of three years or less in a manner that the terms of not more than two members expire on December 31 of each year. A vacancy shall be filled by appointment by the governor for the unexpired term. A board member shall not serve consecutive terms.

B. All members of the board shall be residents of New Mexico. No more than two members shall be appointed from the same congressional district. Three members of the board shall be licensed interior designers and two members shall be chosen to represent the public and shall not have been licensed as interior designers or have a significant financial interest, direct or indirect, in the occupation regulated. For purposes of this section, the interior designer members of the initial board shall have offered interior design services for at least five years, shall have passed the national council for interior design qualification examination and shall have become registered by November 1, 1989.

C. Three members of the board shall constitute a quorum for the transaction of business, but no final action shall be taken unless at least three members vote in favor of a proposal.

History: Laws 1989, ch. 53, § 4; 2003, ch. 408, § 26; 2007, ch. 245, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, requires that members of the board be residents of New Mexico, and that no more than two members shall be appointed from the same congressional district and

increases the number of members who must be licensed interior designers to three and decreases the number of members who must represent the public to two.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A.

61-24C-5. Powers and duties of the board. (Repealed effective July 1, 2024.)

The board:

A. shall administer, coordinate and enforce the provisions of the Interior Designers Act [61-24C-1 NMSA 1978]. The board may investigate allegations of violations of the provisions of the Interior Designers Act;

B. shall adopt regulations to carry out the purposes and policies of the Interior Designers Act, including regulations relating to professional conduct, standards of performance and professional examination and licensure, reasonable license, application, renewal and late fees and the establishment of ethical standards of practice for a licensed interior designer in New Mexico;

C. shall require a licensee, as a condition of the renewal of the license, to undergo continuing education requirements as set forth in the Interior Designers Act;

D. shall maintain an official roster showing the name, address and license number of each interior designer licensed pursuant to the Interior Designers Act;

- E. shall conduct hearings and keep records and minutes necessary to carry out its functions;
- F. may adopt a common seal for use by licensed interior designers; and
- G. shall do all things reasonable and necessary to carry out the purposes of the Interior Designers Act.

History: Laws 1989, ch. 53, § 5; 2003, ch. 408, § 27; 2007, ch. 245, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, changes references from interior designer to licensed interior designer.

The 2003 amendment, effective July 1, 2003, deleted former Subsections C and D, concerning employment of director and contracting for office space and administrative services, and redesignated the subsequent subsections accordingly.

61-24C-6. Compensation and expenses. (Repealed effective July 1, 2024.)

- A. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.
- B. The board shall fix the compensation of its employees by resolution adopted at a regular meeting of the board.

History: Laws 1989, ch. 53, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

61-24C-7. Board officers. (Repealed effective July 1, 2024.)

The board shall meet and organize within sixty days after its appointment and designate one member as president, one as vice president and one as secretary-treasurer. The board may appoint an executive director. The director may not be a member of the board. The executive director may receive reimbursement for necessary expenses incurred in carrying out his duties and may receive compensation set by the board.

History: Laws 1989, ch. 53, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

61-24C-8. Requirements for licensure. (Repealed effective July 1, 2024.)

Each applicant for licensure shall apply to the board. Except as otherwise provided in the Interior Designers Act [61-24C-1 NMSA 1978], each applicant shall take and pass a nationally standardized examination. The board may adopt substantially all or part of the examination and grading procedures of the national council for interior design qualifications. Prior to examination, the applicant shall provide substantial evidence to the board that the applicant:

- A. is a graduate of a five-year interior design program from an accredited institution and has completed at least one year of diversified interior design experiences;
- B. is a graduate of a four-year interior design program from an accredited institution and has completed at least two years of diversified interior design experience;
- C. has completed at least three years of an interior design curriculum from an accredited institution and has completed three years of diversified interior design experience;
- D. is a graduate of a two-year interior design program from an accredited institution and has completed four years of diversified interior design experience; or
- E. has apprenticed under a designer who has passed the national council for interior design qualification examination or a licensed designer for a minimum of eight years.

History: Laws 1989, ch. 53, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

61-24C-9. License without examination. (Repealed effective July 1, 2024.)

A. If any person applies for licensure within one year after the effective date of the Interior Designers Act [61-24C-1 NMSA 1978] and that person has successfully completed the national council of interior design qualification examination or has completed at least eight years of full-time, diversified experience in the practice of interior design that person may be issued a license without examination. Licensure pursuant to this subsection shall be subject to the board's discretionary review of the experience qualification.

B. The board may accept, in lieu of examination, satisfactory evidence of licensure in another state or country where the qualifications are equal to or exceed those required by the provisions of the Interior Designers Act, provided that the applicant holds a current license in the other jurisdiction and has complied with all other requirements of the Interior Designers Act.

C. The board may accept, in lieu of examination, satisfactory evidence of licensure or certification by the national council for interior design qualifications.

History: Laws 1989, ch. 53, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

"Effective date of the Interior Designers Act". — The "effective date of the Interior Designers Act", referred to near the beginning of Subsection A, means the effective date of Laws 1989, ch. 53, which is June 16, 1989.

61-24C-10. License; issuance; renewal; denial, suspension or revocation. (Repealed effective July 1, 2024.)

A. A license shall be issued to every person who presents satisfactory evidence of possessing the qualifications of education, experience and, as appropriate, the examination performance required by the provisions of the Interior Designers Act, provided that the applicant has reached the age of majority and, except as provided in Section 61-1-34 NMSA 1978, pays the required fees.

B. Each original license shall authorize the holder to use the title of and be known as a licensed interior designer from the date of issuance to the next renewal date unless the license is suspended or revoked.

C. All licenses shall expire annually and shall be renewed by submitting a completed renewal application, and except as provided in Section 61-1-34 NMSA 1978, accompanied by the required fees.

D. A license may not be renewed until the licensee submits satisfactory evidence to the board that, during the last year, the licensee has participated in not less than eight hours of continuing education approved by the board. The board shall approve only continuing education that builds upon basic knowledge of interior design. The board may make exceptions from the continuing education requirement in emergency or hardship cases.

E. The holder of a license that has expired through failure to renew may renew the license at any time within two years from the date on which the license expired, upon approval of the board.

F. The board may promulgate policies and procedures providing for the establishment of an inactive status for licensees temporarily not engaged in the practice of interior design.

G. In accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may deny, refuse to renew, suspend or revoke a license or impose probationary conditions when the licensee has:

- (1) obtained the license by means of fraud, misrepresentation or concealment of material facts;
- (2) committed an act of fraud or deceit in professional conduct or been convicted of a felony;
- (3) made any representation as being a licensed interior designer prior to being issued a license, except as authorized under the provisions of the Interior Designers Act;
- (4) been found by the board to have aided or abetted an unlicensed person in violating the provisions of the Interior Designers Act; or
- (5) failed to comply with the provisions of the Interior Designers Act or regulations adopted pursuant to that act.

History: Laws 1989, ch. 53, § 10; 2007, ch. 245, § 5; 2020, ch. 6, § 53.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee and renewal fee for qualified military service members, their spouses and dependent children, and for certain veterans; in Subsection A, after "majority and", added "except as provided in Section 61-1-34 NMSA 1978"; and in Subsection C, after

"renewal application", added "and except as provided in Section 61-1-34 NMSA 1978".

The 2007 amendment, effective June 15, 2007, amends Subsection C providing for the annual expiration and renewal of licenses.

61-24C-11. License required; penalty. (Repealed effective July 1, 2024.)

A. After the results of the first examination held pursuant to the Interior Designers Act [61-24C-1 NMSA 1978] are announced, no person shall knowingly:

- (1) use the name or title of licensed interior designer when the person is not the holder of a current, valid license issued pursuant to the Interior Designers Act;
- (2) use or present as the person's own the license of another;
- (3) give false or forged evidence to the board or a board member for the purpose of obtaining a license;
- (4) use or attempt to use an interior design license that has been suspended, revoked or placed on inactive status; or
- (5) conceal information relative to violations of the Interior Designers Act.

B. A person who violates a provision of this section is guilty of a misdemeanor and shall be sentenced under the provisions of the Criminal Sentencing Act [31-18-12 NMSA 1978] to imprisonment in the county jail for a definite term of less than one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or to both imprisonment or fine, in the discretion of the judge.

History: Laws 1989, ch. 53, § 11; 2007, ch. 245, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, changes the reference from interior designer to licensed interior designer.

61-24C-12. Penalties levied by the board. (Repealed effective July 1, 2024.)

Upon a finding by the board of a violation of the provisions of the Interior Designers Act [61-24C-1 NMSA 1978], the board may:

- A. refuse to approve an application for licensure;
- B. refuse to renew an existing license;
- C. revoke or suspend a license;
- D. impose an administrative fine;
- E. issue a reprimand;
- F. assess the costs of disciplinary proceedings, as provided in the Uniform Licensing Act [61-1-1 NMSA 1978]; or
- G. invoke any combination of the above listed penalties.

History: Laws 1989, ch. 53, § 12; 2007, ch. 245, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, adds Subsection F.

61-24C-13. Exemptions. (Repealed effective July 1, 2024.)

A. Nothing in the Interior Designers Act [61-24C-1 NMSA 1978] shall be construed as preventing or restricting the practice, services or activities of:

- (1) engineers licensed pursuant to the Engineering and Surveying Practice Act [61-23-1 NMSA 1978];
- (2) architects licensed pursuant to the Architectural Act [61-15-1.1 NMSA 1978];
- (3) contractors licensed pursuant to the Construction Industries Licensing Act [60-13-1 NMSA 1978];
- (4) any interior decorator or individual offering interior decorating services, including but not limited to selection of surface materials, window treatments, wall coverings, paint, floor coverings and lighting fixtures; and

(5) builders, home furnishings salespersons and similar purveyors of goods and services relating to homemaking.

B. Nothing contained in the Interior Designers Act shall prevent any person from rendering or offering to render any of the services that constitute the practice of interior design, provided that such person shall not be permitted to use or be identified by the title "licensed interior designer" unless licensed in accordance with the provisions of that act or as otherwise provided by law.

C. Nothing in the Interior Designers Act shall be construed to permit a licensed interior designer to engage in the practice of engineering as defined in the Engineering and Surveying Practice Act.

History: Laws 1989, ch. 53, § 13; 2007, ch. 245, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, eliminates the provision that permitted a person to use words

or combinations of words other than "interior designer" or "interior design" no matter how similar the words or combinations of words might be.

61-24C-14. License fees. (Repealed effective July 1, 2024.)

Except as provided in Section 61-1-34 NMSA 1978, any fees for an original license or renewal of license, late charges or any other fees authorized by the provisions of the Interior Designers Act shall be set by rule of the board. The fee for initial licensure shall not exceed two hundred dollars (\$200).

History: Laws 1989, ch. 53, § 14; 2021, ch. 92, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2021 amendment, effective June 18, 2021, added "Except as provided in Section 61-1-34 NMSA 1978, any".

61-24C-15. Disclosure requirements. (Repealed effective July 1, 2024.)

A. Interior design documents prepared by a licensed interior designer shall contain a statement that the document is not an architectural or engineering study, drawing, specification or design and is not to be used as the basis for construction of any load-bearing framing, wall or structure construction.

B. Before entering into a contract, a licensed interior designer shall clearly determine the scope and nature of the project and the methods of compensation. The licensed interior designer may offer professional services to the client as a consultant, specifier or supplier on the basis of a fee, percentage or mark-up. The licensed interior designer shall have the responsibility of fully disclosing to the client the manner in which all compensation is to be paid.

C. A licensed interior designer shall not accept any form of compensation from a supplier of goods and services in cash or in kind, unless the licensed interior designer first informs the client of the compensation.

History: Laws 1989, ch. 53, § 15; 2007, ch. 245, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, changes references from interior designer to licensed interior designer.

61-24C-16. Fund established; disposition; method of payment. (Repealed effective July 1, 2024.)

A. There is created the "interior design board fund".

B. All funds received by the board and money collected under the Interior Designers Act [61-24C-1 NMSA 1978] shall be deposited with the state treasurer. The state treasurer shall credit the money to the interior design board fund.

C. Payments out of the interior design board fund shall be on vouchers issued by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts paid to the interior design board fund are subject to appropriation by the legislature and shall be used only for meeting necessary expenses incurred in executing the provisions

and duties of the Interior Designers Act and for promoting interior design education and standards in the state. All money unused at the end of any fiscal year shall remain in the interior design board fund for use in accordance with the provisions of that act.

History: Laws 1989, ch. 53, § 16; 2007, ch. 245, § 10.
Delayed repeals. — For delayed repeal of this section, see 61-24C-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, provides that all funds paid to the board are subject to appropriation by the legislature.

61-24C-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The interior design board is terminated on July 1, 2023 pursuant to the provisions of the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Interior Designers Act until July 1, 2024. Effective July 1, 2024, Chapter 61, Article 24C NMSA 1978 is repealed.

History: 1978 Comp., § 61-24C-17, enacted by Laws 1993, ch. 83, § 5; 2000, ch. 4, § 14; 2005, ch. 208, § 18; 2011, ch. 30, § 6; 2017, ch. 52, § 10.

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

The 2000 amendment, effective February 15, 2000, substituted "2005" for "1999" in the first sentence, and "2006" for "2000" in the last two sentences.

ARTICLE 24D

Home Inspectors

Sec.

- 61-24D-1. Short title.
- 61-24D-2. Definitions.
- 61-24D-3. New Mexico home inspectors board; created; powers and duties.
- 61-24D-4. Pre-inspection agreement; report; disclaimer; no waiver of duty.
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- 61-24D-9. Licensee; continuing education requirement.
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- 61-24D-11. Denial, suspension or revocation of a license.
- 61-24D-12. Insurance requirements.
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- 61-24D-14. Advertising.
- 61-24D-15. Home inspector fund created; deposits; method of payment.
- 61-24D-16. Civil and criminal penalties; injunctive relief.

61-24D-1. Short title.

Chapter 61, Article 24D NMSA 1978 may be cited as the "Home Inspector Licensing Act".

History: Laws 2019, ch. 239, § 1; 2022, ch. 39, § 92.

The 2022 amendment, effective May 18, 2022, changed "This act" to "Chapter 61, Article 24D NMSA 1978".

61-24D-2. Definitions.

As used in the Home Inspector Licensing Act:

- A. "board" means the New Mexico home inspectors board;
- B. "client" means a person or an agent of the person who, through a written pre-inspection agreement, engages the services of a home inspector for the purpose of obtaining a report on the condition of residential real property;
- C. "compensation" means the payment for home inspection services pursuant to the written pre-inspection agreement;
- D. "foreign home inspector" means a home inspector who does not hold a license but who holds a current and valid home inspector license issued by another jurisdiction in the United States;

E. "home inspection" means a noninvasive, nondestructive examination by a person of the interior and exterior components of a residential real property, including the property's structural components, foundation and roof, for the purposes of providing a professional written opinion regarding the site aspects and condition of the property and its carports, garages and reasonably accessible installed components. "Home inspection" includes the examination of the property's heating, cooling, plumbing and electrical systems, including the operational condition of the systems' controls that are normally operated by a property owner;

F. "home inspector" means a person who performs home inspections for compensation;

G. "license" means a home inspector license issued by the board in accordance with the Home Inspector Licensing Act;

H. "licensee" means the holder of a license;

I. "pre-inspection agreement" means the written agreement signed by the client and a home inspector by which a client engages the services of the home inspector and that sets forth at a minimum the following:

(1) the amount of compensation due and payable to the home inspector for the home inspection and delivery of a report;

(2) a list of all components and systems that will be inspected; and

(3) the date by which the client will receive the report;

J. "report" means a written opinion prepared by a home inspector pursuant to the terms of a pre-inspection agreement regarding the functional and physical condition of the residential real property as determined by a home inspection conducted by a home inspector; and

K. "residential real property" means any real property or manufactured or modular home that is used for or intended to be used for residential purposes and that is a single-family dwelling, duplex, triplex, quadplex or unit, as "unit" is defined by the Condominium Act [47-7A-1 through 47-7D-20 NMSA 1978].

History: Laws 2019, ch. 239, § 2.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 2 effective January 1, 2020.

61-24D-3. New Mexico home inspectors board; created; powers and duties.

A. The "New Mexico home inspectors board" is created and is administratively attached to the regulation and licensing department.

B. The board shall consist of five members, appointed by the governor, who have been residents of the state for at least three consecutive years immediately prior to their appointment. Three members shall be home inspectors. One member shall be a real estate qualifying or associate broker licensed in accordance with Chapter 61, Article 29 NMSA 1978, and one member shall be a member of the public who has never been licensed as a home inspector or real estate broker. No more than one member shall be a resident of any one county in the state. The initial home inspector members appointed shall demonstrate that they have been actively and lawfully engaged in home inspections for at least twenty-four months prior to the effective date of the Home Inspector Licensing Act and have met the requirements of Paragraphs (1) through (4) of Subsection A of Section 61-24D-6 NMSA 1978. The initial home inspector members appointed shall comply with Paragraph (6) of Subsection A of Section 61-24D-6 NMSA 1978 within six months of the effective date of the licensing examination rule promulgated by the board in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978]. After the board is initially established, any replacement of a home inspector member shall be a licensee.

C. Board members shall serve for five years or until their successors are appointed and qualified. The governor may remove a member with or without cause. In the event of a vacancy, the governor shall appoint a member to complete the unexpired term. The initial board members appointed shall serve staggered terms from the date of their appointment as follows:

(1) two members for three-year terms;

(2) two members for two-year terms; and

(3) one member for a one-year term.

D. The board shall elect annually from among its members a chair and other officers as the board determines. The board shall meet at times and places as fixed by the board. A majority of the board constitutes a quorum.

E. Members of the board may receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

F. The board shall possess all powers and perform all duties prescribed by the Home Inspector Licensing Act and as otherwise provided by law and may promulgate rules in accordance with the State Rules Act to carry out the provisions of the Home Inspector Licensing Act.

G. Pursuant to the provisions of the Home Inspector Licensing Act, the board shall:

- (1) adopt rules and procedures necessary to administer and enforce the provisions of the Home Inspector Licensing Act;
- (2) adopt and publish a code of ethics and standards of practice for persons licensed under the Home Inspector Licensing Act;
- (3) issue, renew, suspend, modify or revoke licenses to home inspectors in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];
- (4) establish standards for the training, experience and continuing education requirements of the Home Inspector Licensing Act;
- (5) establish the amount and administer the fees charged for examinations, initial licensure, license renewals, reinstatement of revoked or suspended licenses, reactivation of inactive or expired licenses, criminal background checks and other services pursuant to the provisions of the Home Inspector Licensing Act;
- (6) adopt and approve a licensing examination, which may be administered by a nationally accepted testing service as determined by the board;
- (7) conduct state and criminal background checks on all applicants for a license;
- (8) maintain a list of the names and addresses of all licensees and of all persons whose licenses have been suspended or revoked within that year, together with such other information relative to the enforcement of the provisions of the Home Inspector Licensing Act;
- (9) maintain a statement of all funds received and a statement of all disbursements;
- (10) mail copies of statements to any person in this state upon request; and
- (11) perform other functions and duties as may be necessary to administer or carry out the provisions of the Home Inspector Licensing Act.

History: Laws 2019, ch. 239, § 3; 2022, ch. 39, § 93.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico home inspectors board is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; in Subsection B, after "promulgated by the board", added "in accordance with the State Rules Act"; in Subsection F, after "provided by law and may",

deleted "make and enforce rules" and added "promulgate rules in accordance with the State Rules Act", and after "provisions of", deleted "that" and added "the Home Inspector Licensing"; in Subsection G, Paragraph G(3), after "licenses to home inspectors", deleted "pursuant to the provisions of the Home Inspectors Licensing" and added "in accordance with the Uniform Licensing"; and deleted Subsection H.

61-24D-4. Pre-inspection agreement; report; disclaimer; no waiver of duty.

A. A home inspector shall enter into a pre-inspection agreement with a client prior to commencement of a home inspection. The written pre-inspection agreement shall include, in all capital letters, the following statement: "THE HOME INSPECTOR WILL NOT DETERMINE AND THE REPORT PROVIDED UPON COMPLETION OF THE HOME INSPECTION WILL NOT CONTAIN A DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS."

B. A home inspector shall provide a client with a report of the home inspection by the date set forth in the pre-inspection agreement. If the pre-inspection agreement does not set forth a date by which the report shall be provided to the client, the home inspector shall provide the report to the client no later than five days after the home inspection was performed.

C. The report shall contain the following statement: "THE HOME INSPECTOR DID NOT DETERMINE AND THIS REPORT DOES NOT CONTAIN A DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS."

D. Contractual provisions that purport to waive any duty owed pursuant to the Home Inspector Licensing Act or accompanying rules as prescribed by the board or that limit the liability of the home inspector to an amount less than the professional liability insurance minimum coverage per claim as prescribed by the board are invalid.

History: Laws 2019, ch. 239, § 4.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 4 effective January 1, 2020.

61-24D-5. License required; exemptions.

A. A person who is not a licensee shall not:

(1) conduct home inspections, develop a report or otherwise engage in the business of home inspection;

(2) in the course of conducting business, use the title "home inspector", "certified home inspector", "registered home inspector", "licensed home inspector", "professional home inspector" or any other title, abbreviation, letters, figures or signs that indicate the person is a licensed home inspector; or

(3) use the terms "state licensed" or "licensed" to refer to an inspection conducted or a report prepared by a person who is not a licensee.

B. A business entity shall not provide home inspection services unless all of the home inspectors employed by the business are licensees.

C. A business entity shall not use, in connection with the name or signature of the business, the title "home inspectors" to describe the business entity's services unless each person employed by the business as a home inspector is a licensee.

D. The Home Inspector Licensing Act does not apply to a person:

(1) licensed by the state as an engineer, an architect, a real estate qualifying or associate broker, a real estate appraiser, a certified general appraiser, a residential real estate appraiser or a pest control operator, when acting within the scope of the person's license;

(2) licensed by the state or a political subdivision of the state as an electrician, a general contractor, a plumber or a heating and air conditioning technician, when acting within the scope of the person's license;

(3) regulated by the state as an insurance adjuster, when acting within the scope of the person's license;

(4) employed by the state or a political subdivision of the state as a code enforcement official, when acting within the scope of the person's employment;

(5) who performs an energy audit of a residential property;

(6) who performs a warranty evaluation of components, systems or appliances within a resale residential property for the purpose of issuing a home warranty; provided that all warranty evaluation reports include a statement that the warranty evaluation performed is not a home inspection and does not meet the standards of a home inspection pursuant to the provisions of the Home Inspector Licensing Act. A home warranty company shall not refer to a warranty evaluation as a home inspection;

(7) who in the scope of the person's employment performs safety inspections of utility equipment in or attached to residential real property pursuant to the provisions of Chapter 62 NMSA 1978 or rules adopted by the public regulation commission; and

(8) hired by the owner or lessor of residential real property to perform an inspection of the components of the residential real property for the purpose of preparing a bid or estimate for performing construction, remodeling or repair work in the residential real property.

History: Laws 2019, ch. 239, § 5.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 5 effective January 1, 2020.

61-24D-6. Licensure.

- A. Unless otherwise provided in the Home Inspector Licensing Act, an applicant for a license shall:
- (1) complete an application on forms provided by the board;
 - (2) provide documentation to establish that the applicant is at least eighteen years of age;
 - (3) provide the board with the applicant's fingerprints and all information necessary for a state and national criminal background check;
 - (4) provide proof of and maintain insurance coverage as provided in Section 61-24D-12 NMSA 1978;
 - (5) have completed at least eighty hours of classroom training, the content of which shall be established by rule of the board;
 - (6) pass a national home inspector licensing examination and any additional licensing examinations as prescribed by the board; and
 - (7) have completed at least eighty hours of field training, or its equivalent, as determined by the board.
- B. Paragraphs (5) and (7) of Subsection A of this section shall not apply to a person who has:
- (1) worked as a home inspector in each of the twenty-four months immediately preceding the effective date of the Home Inspector Licensing Act; and
 - (2) performed at least one hundred home inspections for compensation in the twenty-four months immediately preceding the effective date of the Home Inspector Licensing Act.
- C. After the board's review of all information obtained by the board and submitted by the applicant as required by this section, if all of the requirements for licensure are met, the board shall issue a license to the applicant.

History: Laws 2019, ch. 239, § 6; 2021, ch. 70, § 11.

The 2021 amendment, effective June 18, 2021, removed proof of legal residency of the United States as a requirement for application for licensure as a home inspector; and in Subsection A, Paragraph A(2), after "eighteen

years of age", deleted "and a legal resident of the United States", and in Paragraph A(4), after "Section", deleted "12 of the Home Inspector Licensing Act" and added "61-24D-12 NMSA 1978".

61-24D-7. Fingerprints; criminal background checks.

- A. All applicants for licensure shall:
- (1) provide fingerprints to the department of public safety to permit a national criminal background check and to conduct a state background check; and
 - (2) have the right to inspect records if the applicant's licensure is denied.
- B. Records obtained by the board pursuant to the provisions of this section shall not be disclosed except as provided by law. The board is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in the Home Inspector Licensing Act.
- C. Records obtained by the board pursuant to the provisions of this section shall not be used for any purpose other than for licensing purposes pursuant to the Home Inspector Licensing Act. Records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.
- D. A person who releases or discloses records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2019, ch. 239, § 7.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 7 effective January 1, 2020.

61-24D-8. License validity period; renewal.

A license shall be valid for a period not to exceed three years. No later than the last day of the month immediately following the licensee's birth month in the third calendar year after the

license becomes effective, a licensee may renew the license by submitting a renewal application, renewal fee, proof of completion of the required continuing education as established by rule of the board and other information necessary for a state and national criminal background check. A home inspection performed based on an expired license shall be deemed a violation of the Home Inspector Licensing Act.

History: Laws 2019, ch. 239, § 8.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 8 effective January 1, 2020.

61-24D-9. Licensee; continuing education requirement.

The board shall adopt rules providing for continuing education programs that offer courses in home inspection practices and techniques. The rules shall require that a home inspector, as a condition of license renewal, shall successfully complete a minimum of sixty classroom hours of board-approved instruction every three years.

History: Laws 2019, ch. 239, § 9.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 9 effective January 1, 2020.

61-24D-10. License recognition; reciprocity.

A. The board may issue a license to a foreign home inspector; provided that the applicant's resident state license requirements are the same as or similar to the requirements set forth in the Home Inspector Licensing Act as determined by the board. In the event that the state requirements for licensing a home inspector are not substantially similar to the provisions of the Home Inspector Licensing Act, or if the requirements cannot be verified, a foreign home inspector may be issued a license in accordance with Section 6 [61-24D-6 NMSA 1978] of that act.

B. The board may negotiate agreements with other states or licensing jurisdictions to allow for reciprocity regarding licensure. A license granted pursuant to a reciprocity agreement shall be issued upon payment by the applicant of the application fee and verification that the applicant has complied with the licensing jurisdiction's requirements, including continuing education requirements. The applicant shall provide to the board documentation necessary to demonstrate that the applicant currently holds a license in good standing in the licensing jurisdiction.

History: Laws 2019, ch. 239, § 10.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 10 effective January 1, 2020.

61-24D-11. Denial, suspension or revocation of a license.

A. The board may deny issuance of a license or may suspend, revoke, limit or condition a license if the applicant or licensee is convicted of a felony or misdemeanor, provided that the denial, suspension or revocation is in accordance with the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978]; has by false or fraudulent representations obtained a license; or in performing or attempting to perform any of the activities covered by the provisions of the Home Inspector Licensing Act, the applicant or licensee has:

- (1) made a substantial misrepresentation;
- (2) violated any of the provisions of the Home Inspector Licensing Act or any rule of the board;
- (3) offered or delivered compensation, inducement or reward to the owner of the inspected property or to the broker or the agent for the referral of any business to the home inspector or the home inspector's company;
- (4) had a license to perform home inspections revoked, suspended, denied, stipulated or otherwise limited in any state, jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts proscribed in this subsection;

(5) failed to furnish the board, its investigators or its representatives with information requested by the board in the course of an official investigation; or

(6) performed or offered to perform for an additional fee any repair to a structure on which the home inspector or the home inspector's company has prepared a report at any time during the twelve months immediately prior to the repair or offer to repair, except that a home inspection company that is affiliated with or that retains a home inspector does not violate this paragraph if the home inspection company performs repairs pursuant to a claim made pursuant to the terms of a home inspection contract.

B. Disciplinary proceedings conducted by the board may be instituted by sworn complaint by any person, including a board member, and shall conform to the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

C. All licensing, revocation and suspension proceedings conducted by the board shall be governed by the provisions of the Uniform Licensing Act.

History: Laws 2019, ch. 239, § 11.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 11 effective January 1, 2020.

61-24D-12. Insurance requirements.

A. All licensees and their employers shall carry at all times errors and omissions insurance and professional liability insurance to cover all activities contemplated pursuant to the provisions of the Home Inspector Licensing Act.

B. In addition to the powers and duties granted to the board pursuant to the provisions of Section 3 [61-24D-3 NMSA 1978] of the Home Inspector Licensing Act, the board may adopt rules that establish the minimum terms and conditions of coverage, including limits of coverage and permitted exceptions. If adopted by the board, the rules shall require every applicant for a license and licensee who applies for renewal of a license to provide the board with satisfactory evidence that the applicant or licensee has errors and omissions insurance coverage and professional liability insurance coverage that meet the minimum terms and conditions required by board rule.

C. The board is authorized to solicit sealed, competitive proposals from insurance carriers to provide a group errors and omissions insurance policy and a professional liability insurance policy that comply with the terms and conditions established by board rule. The board may approve one or more policies that comply with the board rules.

D. Licensees shall not be required to contract with the group policy provider. Licensees may satisfy any requirement for errors and omissions insurance coverage and professional liability insurance coverage by purchasing an individual policy that is consistent with standards established by the board.

History: Laws 2019, ch. 239, § 12.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 12 effective January 1, 2020.

61-24D-13. Fees.

In addition to any fees to cover reasonable and necessary administrative expenses, the board shall establish, charge and collect:

- A. an initial application fee, no less than two hundred fifty dollars (\$250);
- B. a state and national criminal background check fee, not to exceed one hundred dollars (\$100);
- C. except as provided in Section 61-1-34 NMSA 1978, a three-year license fee, no less than one thousand dollars (\$1,000);
- D. a reactivation fee, not to exceed two hundred dollars (\$200);
- E. a reinstatement fee, not to exceed two hundred dollars (\$200); and

F. a fee for each duplicate license issued because a license is lost or destroyed, not to exceed fifty dollars (\$50.00); provided that an affidavit attesting to the loss or destruction of the license shall be required before issuance of a duplicate license.

History: Laws 2019, ch. 239, § 13; 2020, ch. 6, § 54.
The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military

service members, their spouses and dependent children, and for certain veterans; and in Subsection C, added "except as provided in Section 61-1-34 NMSA 1978".

61-24D-14. Advertising.

The term "licensed home inspector" along with the license number of the home inspector shall appear on all advertising, correspondence and documents incidental to the business of home inspection, including the pre-inspection agreement and the report.

History: Laws 2019, ch. 239, § 14.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 14 effective January 1, 2020.

61-24D-15. Home inspector fund created; deposits; method of payment.

A. There is created in the state treasury the "home inspector fund" to be administered by the board. All fees received by the board pursuant to the Home Inspector Licensing Act shall be deposited with the state treasurer to the credit of the home inspector fund. Income earned on investment of the fund shall be credited to the fund.

B. Money in the home inspector fund is appropriated to the board to meet necessary expenses incurred in the enforcement of the provisions of the Home Inspector Licensing Act, in carrying out the duties imposed by the Home Inspector Licensing Act and for the promotion of education and standards for home inspectors in the state. Payments out of the home inspector fund shall be on vouchers issued and signed by the person designated by the board upon warrants drawn by the department of finance and administration.

C. All unexpended or unencumbered balances remaining at the end of a fiscal year shall not revert to the general fund.

History: Laws 2019, ch. 239, § 15.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 15 effective January 1, 2020.

61-24D-16. Civil and criminal penalties; injunctive relief.

A. A person who engages in the business or acts in the capacity of a home inspector within New Mexico without a license issued by the board or pursuant to the Home Inspector Licensing Act is guilty of a misdemeanor.

B. If a person is engaged or has engaged in any act or practice violative of a provision of the Home Inspector Licensing Act, the attorney general or the district attorney of the judicial district in which the person resides or in which the violation is occurring or has occurred may maintain an action in the name of the state to prosecute the violation or to enjoin the act or practice.

C. Notwithstanding a provision of the Home Inspector Licensing Act to the contrary, the board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation of the Home Inspector Licensing Act and may assess administrative costs for any investigation or administrative or other proceedings against a home inspector or against a person who is found, through an administrative proceeding, to have acted as a home inspector without a license. Appeals from decisions of the board shall be made as provided in Section 39-3-1.1 NMSA 1978.

History: Laws 2019, ch. 239, § 16.

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239, § 16 effective January 1, 2020.

ARTICLE 25

Massage Practitioners

(Repealed by Laws 1981, ch. 241, § 35.)

61-25-1 to 61-25-14. Repealed.

Repeals. — Laws 1981, ch. 241, § 35, repeals 61-25-1 to 61-25-14 NMSA 1978, relating to the regulation of massage practitioners, effective April 8, 1981.

ARTICLE 26

Polygraphers

(Repealed by Laws 1993, ch. 212, § 23.)

61-26-1 to 61-26-15. Repealed.

Repeals. — Laws 1993, ch. 212, § 23A repeals 61-26-1 to 61-26-15 NMSA 1978, as enacted or amended by Laws 1973, ch. 28, §§ 1 to 11 Laws 1974, ch. 78, § 32, and Laws 1989, ch. 152, § 1 to 12, regulating polygraphers, effective July 1, 1993. For former provisions, see 1990 Replacement Pamphlet. For present comparable provisions, see Chapter 61, Article 27A NMSA 1978.

Laws 1989, ch. 152, § 13 had previously repealed 61-26-13 NMSA 1978, as enacted by Laws 1979, ch. 75, § 7, relating to transfer of appropriations and property of former polygraphy board, effective June 16, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

ARTICLE 27

Private Investigators

(Repealed by Laws 1993, ch. 212, § 23.)

61-27-1 to 61-27-49. Repealed.

Repeals. — Laws 1993, ch. 212, § 23B repeals 61-27-1 to 61-27-49 NMSA 1978, as enacted by Laws 1965, ch. 247, §§ 1 to 49 and amended by Laws 1971, ch. 226 §§ 1 to 7 and Laws 1973, ch. 55, § 1, regulating private

investigators, effective July 1, 1993. For former provisions, see 1990 Replacement Pamphlet. For present comparable provisions, see Chapter 61, Article 27A NMSA 1978.

ARTICLE 27A

Private Investigators and Polygraphers

Sec.

61-27A-1. Recompiled.
61-27A-2. Recompiled.
61-27A-3. Recompiled.
61-27A-4. Recompiled.
61-27A-5. Recompiled.
61-27A-6. Recompiled.
61-27A-7. Repealed.
61-27A-8. Repealed.
61-27A-9. Recompiled.
61-27A-10. Repealed.
61-27A-11. Recompiled.

Sec.

61-27A-12. Recompiled.
61-27A-13. Recompiled.
61-27A-14. Recompiled.
61-27A-15. Repealed.
61-27A-16. Recompiled.
61-27A-17. Recompiled.
61-27A-18. Recompiled.
61-27A-19. Repealed.
61-27A-20. Recompiled.
61-27A-21. Repealed.

61-27A-1. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of

Chapter 61 of the NMSA 1978 was recompiled by the compiler as Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-1 NMSA 1978 was recompiled as § 61-27B-1 NMSA 1978.

61-27A-2. Recompiled.

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of

Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-2 NMSA 1978 was recompiled as § 61-27B-2 NMSA 1978.

61-27A-3. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of Chapter 61

of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-3 NMSA 1978 was recompiled as § 61-27B-3 NMSA 1978.

61-27A-4. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of

Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-4 NMSA 1978 was recompiled as § 61-27B-4 NMSA 1978.

61-27A-5. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of

Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-5 NMSA 1978 was recompiled as § 61-27B-5 NMSA 1978.

61-27A-6. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of

Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-6 NMSA 1978 was recompiled as § 61-27B-7 NMSA 1978.

61-27A-7. Repealed.

Repeal. — Laws 2007, ch. 115, § 37 repeals 61-27A-7 NMSA 1978, being Laws 1993, ch. 212, § 7, relating to

license fees, effective July 1, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMOneSource.com*.

61-27A-8. Repealed.

Repeal. — Laws 2007, ch. 115, § 37 repeals 61-27A-8 NMSA 1978, being Laws 1993, ch. 212, § 8, relating to license renewal, effective July 1, 2007. For provisions

of former section, see the 2006 NMSA 1978 on *NMOneSource.com*.

61-27A-9. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of

Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-9 NMSA 1978 was recompiled as § 61-27B-22 NMSA 1978.

61-27A-10. Repealed.

Repeal. — Laws 2007, ch. 115, § 37 repeals 61-27A-10 NMSA 1978, being Laws 1993, ch. 212, § 10, relating to operation of business, effective July 1, 2007. For provisions

of former section, see the 2006 NMSA 1978 on *NMOne Source.com*.

61-27A-11. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of

Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-11 NMSA 1978 was recompiled as § 61-27B-24 NMSA 1978.

61-27A-12. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigations Act to be inserted in between existing

sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-12 NMSA 1978 was recompiled as § 61-27B-25 NMSA 1978.

61-27A-13. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigators Act to be inserted in between existing

sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-13 NMSA 1978 was recompiled as § 61-27B-26 NMSA 1978.

61-27A-14. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigators Act to be inserted in between existing

sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-14 NMSA 1978 was recompiled as § 61-27B-27 NMSA 1978.

61-27A-15. Repealed.

Repeals. — Laws 1998, ch. 55, § 94 repeals 61-27A-15 NMSA 1978, as enacted by Laws 1993, ch. 212, § 15,

relating to review of record, effective September 1, 1998. For former provisions, see 1993 Replacement Pamphlet.

61-27A-16. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigators Act to be inserted in between existing

sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-16 NMSA 1978 was recompiled as § 61-27B-28 NMSA 1978.

61-27A-17. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers

Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private

Investigators Act to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new

Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-17 NMSA 1978 was recompiled as § 61-27B-29 NMSA 1978.

61-27A-18. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigators Act to be inserted in between existing

sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-18 NMSA 1978 was recompiled as § 61-27B-30 NMSA 1978.

61-27A-19. Repealed.

Repeal. — Laws 2007, ch. 115, § 37 repeals 61-27A-19 NMSA 1978, being Laws 1993, ch. 212, § 19, relating to deadly weapons, effective July 1, 2007. For provisions

of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

61-27A-20. Recompiled.

Recompilation. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigators Act to be inserted in between existing

sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-20 NMSA 1978 was recompiled as § 61-27B-32 NMSA 1978.

61-27A-21. Repealed.

Repeal. — Laws 2007, ch. 115, § 37 repeals 61-27A-21 NMSA 1978, being Laws 2000, ch. 4, § 16, effective July 1,

2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

ARTICLE 27B

Private Investigations

Sec.

- 61-27B-1. Short title. (Repealed effective July 1, 2024.)
- 61-27B-2. Definitions. (Repealed effective July 1, 2024.)
- 61-27B-3. License required. (Repealed effective July 1, 2024.)
- 61-27B-4. Persons exempted. (Repealed effective July 1, 2024.)
- 61-27B-5. Administration of act; rules. (Repealed effective July 1, 2024.)
- 61-27B-6. Private investigations advisory board; created; members. (Repealed effective July 1, 2024.)
- 61-27B-7. Requirements for licensure. (Repealed effective July 1, 2024.)
- 61-27B-8. Private investigation company; requirements for licensure. (Repealed effective July 1, 2024.)
- 61-27B-9. Private investigations manager; requirements for licensure; notification of department in event of termination of employment. (Repealed effective July 1, 2024.)
- 61-27B-10. Private patrol operator; requirements for licensure. (Repealed effective July 1, 2024.)
- 61-27B-11. Private patrol company; requirements for licensure. (Repealed effective July 1, 2024.)
- 61-27B-12. Private patrol operations manager; requirement for licensure; notification of department in event of termination of employment. (Repealed effective July 1, 2024.)
- 61-27B-13. Polygraph examiner. (Repealed effective July 1, 2024.)

Sec.

- 61-27B-14. Private investigations employee; registration; requirements. (Repealed effective July 1, 2024.)
- 61-27B-15. Security guard; levels of registration. (Repealed effective July 1, 2024.)
- 61-27B-16. Security guard; level one; registration; requirements. (Repealed effective July 1, 2024.)
- 61-27B-17. Security guard; level two; registration; requirements. (Repealed effective July 1, 2024.)
- 61-27B-18. Security guard; level three; registration; requirements. (Repealed effective July 1, 2024.)
- 61-27B-19. Special event permit; nonresident security guard procedure; qualifications; prohibited. (Repealed effective July 1, 2024.)
- 61-27B-20. Fees. (Repealed effective July 1, 2024.)
- 61-27B-21. License and registration renewal. (Repealed effective July 1, 2024.)
- 61-27B-22. Display of license; notification of changes. (Repealed effective July 1, 2024.)
- 61-27B-23. General operations provisions of companies; management; liability for employees' conduct; maintenance of records required; required and permitted activities; allowed categories of unlicensed employees. (Repealed effective July 1, 2024.)

Sec.	Sec.
61-27B-24. Bond required. (Repealed effective July 1, 2024.)	61-27B-30. Fund established. (Repealed effective July 1, 2024.)
61-27B-25. Prohibited acts. (Repealed effective July 1, 2024.)	61-27B-31. Firearms. (Repealed effective July 1, 2024.)
61-27B-26. Denial, suspension or revocation of license or registration. (Repealed effective July 1, 2024.)	61-27B-32. Penalties. (Repealed effective July 1, 2024.)
61-27B-27. Hearing; penalties. (Repealed effective July 1, 2024.)	61-27B-33. Reciprocity. (Repealed effective July 1, 2024.)
61-27B-28. License not transferable. (Repealed effective July 1, 2024.)	61-27B-34. Background investigations. (Repealed effective July 1, 2024.)
61-27B-29. Local regulations. (Repealed effective July 1, 2024.)	61-27B-35. Temporary provision; transition.
	61-27B-36. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

61-27B-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 27B NMSA 1978 may be cited as the "Private Investigations Act".

History: Laws 1993, ch. 212, § 1; 2000, ch. 4, § 15; § 61-27A-1 recompiled as 61-27B-1; Laws 2007, ch. 115, § 1.

Compiler's note. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act", amending 14 sections, repealing 5 sections and enacting 21 new sections that were assigned NMSA 1978 compilation numbers between existing sections of the NMSA 1978. The former Private Investigators and Polygraphers Act was renamed as the "Private Investigations Act". To permit future new sections to be inserted between

existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 was recompiled by the compiler as Article 27B of Chapter 61 NMSA 1978. For the prior law, see the 2006 NMSA 1978 on *NMOneSource.com*.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

The 2007 amendment, effective July 1, 2007, changes the title of the act to the from the "Private Investigators and Polygraphers Act" to the "Private Investigations Act".

61-27B-2. Definitions. (Repealed effective July 1, 2024.)

As used in the Private Investigations Act [61-27B-1 NMSA 1978]:

- A. "armored car company" means a company that knowingly and willingly transports money and other negotiables for a fee or other remuneration;
- B. "bodyguard" means an individual who physically performs the mission of personal security for another individual;
- C. "branch office" means an office of a private investigation company or a private patrol company physically located in New Mexico and managed, controlled or directed by a private investigations manager or private patrol operations manager;
- D. "client" means an individual or legal entity having a contract that authorizes services to be provided in return for financial or other consideration;
- E. "conviction" means any final adjudication of guilty, whether pursuant to a plea of guilty or nolo contendere or otherwise and whether or not the sentence is deferred or suspended;
- F. "department" means the regulation and licensing department;
- G. "individual" means a single human being;
- H. "legal business entity" means a sole proprietorship, corporation, partnership, limited liability company, limited liability partnership or other entity formed for business purposes;
- I. "licensee" means a person licensed pursuant to the Private Investigations Act;
- J. "polygraph examiner" means an individual licensed by the department to engage in the practice of polygraphy;
- K. "polygraphy" means the process of employing an instrument designed to graphically record simultaneously the physiological changes in human respiration, cardiovascular activity, galvanic skin resistance or reflex for the purpose of lie detection and includes the reading and interpretation of polygraphic records and results or any other device used to measure truthfulness;
- L. "private investigation company" means a legal business entity that provides private investigation services, the location of which may be within or outside of the state, provided that the private investigation services are performed within New Mexico;

M. "private investigator" means an individual who is licensed by the department to engage in business or who accepts employment to conduct an investigation pursuant to the Private Investigations Act to obtain information regarding:

- (1) crime or wrongs done or threatened against the United States or any state or territory of the United States;
- (2) a person;
- (3) the location, disposition or recovery of lost or stolen property;
- (4) the cause or responsibility for fires, losses, accidents or damage or injury to persons or properties;
- (5) the securing of evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer; or
- (6) the scene of a motor vehicle accident or evidence related to a motor vehicle accident;

N. "private investigations employee" means an individual who is registered by the department to work under the direct control and supervision of a private investigator for a private investigation company;

O. "private investigations manager" means an individual who:

- (1) is licensed as a private investigator and is issued a license by the department as a private investigations manager;
- (2) directs, controls or manages a private investigation company for the owner of the company; and
- (3) is assigned to and operates from the private investigation company that the private investigations manager is licensed to manage or from a branch office of that private investigation company;

P. "private patrol company" means a legal business entity, the location of which may be within or outside of the state, including an independent or proprietary commercial organization that provides private patrol operator services that are performed in New Mexico and the activities of which include employment of licensed private patrol operators or security guards;

Q. "private patrol employee" means an individual who is registered by the department to work under the direct control and supervision of a private patrol operator for a private patrol company;

R. "private patrol operations manager" means an individual who:

- (1) is licensed as a private patrol operator or registered as a level three security guard and is issued a license by the department as a private patrol operations manager;
- (2) directs, controls or manages a private patrol company for the owner of the company; and
- (3) is assigned to and operates from the private patrol company that the private patrol operations manager is licensed to manage or from a branch office of that private patrol company;

S. "private patrol operator" means an individual who is licensed by the department to:

- (1) conduct uniformed or nonuniformed services as a watchman, security guard or patrolman to protect property and persons on or in the property;
- (2) prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind; or
- (3) perform the services required of a security guard or security dog handler or provide security services for an armored car company;

T. "proprietary commercial organization" means an organization or division of an organization that provides full- or part-time security guard services solely for itself;

U. "registrant" means an individual registered as a private investigations employee, a private patrol operations employee or a security guard at any level;

V. "security dog handler" means an individual who patrols with dogs to detect illegal substances or explosives;

W. "security guard" means an individual who is registered to engage in uniformed or nonuniformed services under the direct control and supervision of a licensed private patrol operator or a private patrol operations manager to perform such security missions as watchman, fixed post guard, dog handler, patrolman or other person to protect property or prevent thefts; and

X. "special event" means a parade or other public or private event of short duration requiring security.

History: Laws 1993, ch. 212, § 2; 1999, ch. 272, § 32; § 61-27A-2 recompiled as § 61-27B-2; Laws 2007, ch. 115, § 2.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, deletes and adds definitions relating to private investigators and private patrol companies.

ANNOTATIONS

Standard of care. — Polygraphers are professionals subject to a malpractice standard of care, not just a "reasonable man" standard. *Lewis v. Rodriguez*, 1988-NMCA-062, 107 N.M. 430, 759 P.2d 1012.

61-27B-3. License required. (Repealed effective July 1, 2024.)

It is unlawful for an individual to:

A. act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager or to make any representation as being a licensee or registrant unless the individual is licensed by the department pursuant to the Private Investigations Act [61-27B-1 NMSA 1978];

B. render physical protection for remuneration as a bodyguard unless the individual is licensed as a private investigator or a private patrol operator;

C. continue to act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager if the individual's license issued pursuant to the Private Investigations Act has expired;

D. falsely represent that the individual is employed by a licensee; or

E. practice polygraphy for any remuneration without a license issued by the department in accordance with the Private Investigations Act.

History: Laws 1993, ch. 212, § 3; § 61-27A-3 recompiled as § 61-27B-3; Laws 2007, ch. 115, § 3.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, requires a license to act as a security guard, private investigations employee, private investigations manager or private patrol operations manager.

ANNOTATIONS

Under former law. — The proponent of polygraph evidence must show that the polygraph examiner was

licensed. *State v. Sanders*, 117 N.M. 452, 872 P.2d 870 (1994) (now see Rule 11-707 NMRA).

Law reviews. — For note, "Lie Detector Evidence - New Mexico Court of Appeals Holds Voice-Stress Lie Detector Evidence Conditionally Admissible: Simon Neustadt Family Ctr., Inc. v. Bludworth," see 13 N.M.L. Rev. 703 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 4.

Validity and construction of statutes licensing or otherwise regulating operators of polygraph or similar devices, 32 A.L.R.3d 1324.

53 C.J.S. Licenses § 34.

61-27B-4. Persons exempted. (Repealed effective July 1, 2024.)

A. As used in this section, "temporary" means a period of time not to exceed the duration of one private event or one school or nonprofit organization event, as described in Paragraphs (2) and (3) of Subsection B of this section.

B. Investigations Act does not apply to:

(1) an individual employed exclusively and regularly by one employer in connection with the affairs of that employer, provided that the individual patrols or provides security only on the premises of the employer as limited by the employer;

(2) an individual employed exclusively to provide temporary security at a private event that is not open to the public;

(3) individuals providing temporary security at athletic or other youth events and where the events occur under the auspices of a public or private school or a nonprofit organization;

- (4) an attorney licensed in New Mexico conducting private investigations while engaged in the practice of law;
- (5) an officer or employee of the United States or this state or a political subdivision of the United States or this state while that officer or employee is engaged in the performance of the officer's or employee's official duties;
- (6) a person engaged exclusively in the business of obtaining and furnishing information concerning the financial rating of persons;
- (7) a charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit;
- (8) a licensed collection agency or an employee of the agency while acting within the scope of employment while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or the debtor's property;
- (9) admitted insurers, adjusters, agents and insurance brokers licensed by the state performing duties in connection with insurance transactions by them; or
- (10) an institution subject to the jurisdiction of the director of the financial institutions division of the department or the comptroller of currency of the United States.

History: Laws 1993, ch. 212, § 4; § 61-27A-4 recompiled as § 61-27B-4; Laws 2007, ch. 115, § 4.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, exempts individuals who patrol or provide security only on the premises of their employer, who provide temporary security at a private event that is not open to the public, who provide temporary security at athletic or youth events where the events occur under the auspices of a public or private school or nonprofit organization and exempt attorneys licensed in New Mexico who conduct private investigations while engaged in the practice of law.

ANNOTATIONS

Engineer investigating speed of cars in accident is exempt. — Testimony by expert witness, a registered professional engineer, whether "as an engineer" or as a traffic expert concerning the accident and arriving at his opinion as to the speed of the defendant's car was not controlled by the Private Investigators Act (former Sections 61-27-1

to 61-27-49 NMSA 1978) and therefore his testimony was not barred by the fact that he was not a licensed private investigator. *Dahl v. Turner*, 1969-NMCA-075, 80 N.M. 564, 458 P.2d 816, cert. denied, 80 N.M. 608, 458 P.2d 860 (decided under former law) (now Rule 11-702 NMRA).

Full-time public school guards exempt. — A full-time security and patrol force to guard the Albuquerque public school system which is under the supervision and guidance of school authorities is exempt from the provisions of the Private Investigations Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1970 Op. Att'y Gen. No. 70-87 (rendered under former law).

Part-time off-duty police officer checking identification not exempt. — An off-duty municipal police officer or county sheriff's deputy cannot work part time checking identification cards at a liquor establishment (and being compensated by the liquor establishment) without being licensed by the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1974 Op. Att'y Gen. No. 74-15 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 18, 27, 34 to 38.

53 C.J.S. Licenses §§ 35, 36.

61-27B-5. Administration of act; rules. (Repealed effective July 1, 2024.)

A. The department shall enforce and administer the provisions of the Private Investigations Act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

B. The department shall keep a record of each individual licensee.

C. The department shall promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce those rules necessary to carry out the provisions of the Private Investigations Act, including establishing professional ethical standards.

D. The department shall promulgate rules regarding:

(1) licensing private investigators, private investigations managers, private investigation companies, private patrol operators, private patrol operations managers, private patrol employees and polygraph examiners;

(2) registering private investigations employees, security guards and private patrol employees;

(3) establishing minimum training and educational standards for licensure and registration;

(4) establishing continuing education requirements;

(5) establishing and operating a branch office;

- (6) creating a policy on reciprocity with other licensing jurisdictions of the United States;
- (7) providing permits for security guards for special events; and
- (8) conducting background investigations.

History: Laws 1993, ch. 212, § 5; § 61-27A-5 recompiled as § 61-27B-5; Laws 2007, ch. 115, § 5; 2022, ch. 39, § 94.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the regulation and licensing department is required to follow the provisions of the Uniform Licensing Act when enforcing and administering the provisions of the Private Investigations Act and is required to follow the provisions of the State Rules Act when promulgating rules; in Subsection A, after "Private Investigations Act", added "in accordance with the Uniform Licensing Act"; in Subsection C, after "The department shall", deleted "adopt" and added "promulgate rules in accordance with the State Rules Act"; and in Subsection D, after

"The department shall", deleted "adopt" and added "promulgate", and in Paragraph D(6), after "reciprocity with other", deleted "states and territories" and added "licensing jurisdictions".

The 2007 amendment, effective July 1, 2007, eliminates the advisory board; requires the regulation and licensing department to establish professional ethical standards and to adopt rules regarding matters listed in this section.

ANNOTATIONS

Cities prohibited from regulating certain investigative businesses and occupations. — With the exception provided by former Section 61-27-11 NMSA 1978, cities may not regulate the businesses and occupations which are included in the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1965 Op. Att'y Gen. No. 65-177.

61-27B-6. Private investigations advisory board; created; members. (Repealed effective July 1, 2024.)

A. The "private investigations advisory board" is created.

B. The superintendent of regulation and licensing shall appoint members to the advisory board to assist in the conduct of the examination process for licensees and registrants and to assist the department in other manners as requested by the superintendent or provided for in rules of the department.

C. The advisory board members shall consist of at least the following:

- (1) one private investigator;
- (2) one private patrol operator;
- (3) one polygraph examiner; and
- (4) two members of the public.

D. Members of the advisory board shall be reimbursed pursuant to the Per Diem and Mileage Act [Sections 10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance for each day spent in the discharge of their duties.

E. The public members of the advisory board or their spouses shall not:

- (1) have been licensed pursuant to the Private Investigations Act or any prior similar statutory provisions; or
- (2) have a direct or indirect financial interest in a private investigation company, private patrol company, polygraph business or a related business.

History: Laws 2007, ch. 115, § 6; 2017, ch. 52, § 8.

Compiler's note. — Laws 2007, ch. 115, § 6 was enacted as a new section 61-27A-5.1 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-6 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

The 2017 amendment, effective June 16, 2017, changed the composition of the private investigations advisory board, reducing the number of private investigators on the board and increasing the number of public members on the board; in Subsection C, in Paragraph C(1), after the paragraph designation, deleted "two" and added "one", and after "private", deleted "investigators" and added "investigator", in Paragraph C(4), after the paragraph designation, deleted "one member" and added

"two members"; and in Subsection E, in the introductory clause, after "The public", deleted "member" and added "members", after "advisory board or", deleted "the public member's spouse" and added "their spouses", and in Paragraph E(1), after "Act", deleted "the Private Investigators and Polygraphers Act".

Temporary provisions. — Laws 2017, ch. 52, § 21, effective June 16, 2017, provided that in carrying out the statutory requirement to replace professional members with public members on the board of examiners for architects and the private investigations advisory board, the governor shall appoint a public member to replace the applicable professional member whose term first expires after the effective date of this act. If a vacancy occurs in an applicable professional member position prior to the expiration of that term, the governor shall appoint a public member, and that position shall become a public member position.

61-27B-7. Requirements for licensure. (Repealed effective July 1, 2024.)

A. The department shall issue a license as a private investigator to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant has met all requirements set forth by the department in rule, including that the applicant:

- (1) is at least twenty-one years of age;
- (2) is of good moral character;
- (3) has successfully passed an examination as required by department rule;
- (4) has not been convicted of a felony offense, an offense involving dishonesty or an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards as defined by the department; and
- (5) has at least three years' experience that has been acquired within the five years preceding the filing of the application with the department of actual work performed in:
 - (a) investigation for the purpose of obtaining information with reference to a crime or wrongs done or threatened against the United States;
 - (b) investigation of persons;
 - (c) the location, disposition or recovery of lost or stolen property;
 - (d) the cause or responsibility for fire, losses, motor vehicle or other accidents or damage or injury to persons or property; or
 - (e) securing evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer.

B. Years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from employers and shall be subject to independent verification by the department as it deems warranted. The burden of proving necessary experience is on the applicant.

History: Laws 1993, ch. 212, § 6; 1999, ch. 272, § 33; § 61-27A-6 recompiled as § 61-27B-7; Laws 2007, ch. 115, § 7.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For compilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, amends the requirement for licensure as a private investigator, requires applicants to meet all department requirements; requires that applicants be twenty-one years of age; and requires that applicants not have been convicted of an offense involving dishonesty, intentional violence, or illegal possession of a deadly weapon and have not been found to have violated professional ethical standards as defined by the department.

ANNOTATIONS

Engineer investigating speed of cars in accident is exempt. — Testimony by expert witness, a registered professional engineer, whether "as an engineer" or as a traffic expert concerning the accident and arriving at his own opinion as to the speed of the defendant's car was not controlled by the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978) and

therefore his testimony was not barred by the fact that he was not a licensed private investigator. *Dahl v. Turner*, 1969-NMCA-075, 80 N.M. 564, 458 P.2d 816, cert. denied, 80 N.M. 608, 458 P.2d 860 (decided under former law) (now see Rule 11-702 NMRA).

Full-time public school guards exempt. — A full-time security and patrol force to guard the Albuquerque public school system which is under the supervision and guidance of school authorities is exempt from the provisions of the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1970 Op. Att'y Gen. No. 70-87 (rendered under former law).

Part-time off-duty police officer checking identification not exempt. — An off-duty police officer or county sheriff's deputy cannot work part time checking identification cards at a liquor establishment (and being compensated by the liquor establishment) without being licensed by the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1974 Op. Att'y Gen. No. 74-15 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 27.

Regulation of private detectives, private investigators, and security agencies, 86 A.L.R.3d 691.
53 C.J.S. Licenses §§ 26, 27.

61-27B-8. Private investigation company; requirements for licensure. (Repealed effective July 1, 2024.)

A. The department shall issue a license for a private investigation company to a person that files a completed application accompanied by the required fees and that submits satisfactory evidence that the applicant:

- (1) if an individual, is of good moral character; or if a legal business entity, the owners, officers or directors of the entity are of good moral character;

(2) if an individual, has not been convicted of a felony offense, an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards; or if a legal business entity, the owners, officers or directors of the entity, either singly or collectively, have not been convicted of a felony offense or an offense involving intentional violent acts or the illegal use or possession of deadly weapons and have not been found to have violated professional ethical standards;

(3) maintains a surety bond in the amount of ten thousand dollars (\$10,000); however, private investigators who provide personal protection or bodyguard services shall maintain general liability insurance as specified in the Private Investigations Act [61-27B-1 NMSA 1978] in lieu of the surety bond required by the provisions of this paragraph;

(4) has an owner or a licensed private investigations manager who is licensed as a private investigator and who manages the daily operations of the private investigation company;

(5) maintains a physical location in New Mexico where records are maintained and made available for department inspection;

(6) maintains a New Mexico registered agent if the applicant is a private investigation company located outside of New Mexico; and

(7) meets all other requirements set forth in the rules of the department.

B. The owner or the chief executive officer of a private investigation company that provides personal protection or bodyguard services shall maintain a general liability certificate of insurance in an amount required by the department. The department shall suspend the license issued pursuant to this section of a private investigation company that fails to maintain an effective general liability certificate of insurance as required. The department shall not reinstate the license of a private investigation company that has had its license suspended pursuant to this subsection until an application is submitted to the department with the necessary fees and a copy of the private investigation company's general liability certificate of insurance in effect. The department may deny an application for reinstatement of a private investigation company's license, notwithstanding the applicant's compliance with this subsection for:

(1) a reason that would justify a denial to issue a new private investigation company license or that would be cause for a suspension or revocation of a private investigation company's license; or

(2) the performance by the applicant of an act requiring a license issued pursuant to the Private Investigations Act while the applicant's license is under suspension for failure to maintain the applicant's general liability certificate of insurance in effect.

History: Laws 2007, ch. 115, § 8.

Cross references. — For definition of "private investigation company", see 61-27B-2 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 8 was enacted as a new section 61-27A-6.1 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new

section 61-27B-8 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-9. Private investigations manager; requirements for licensure; notification of department in event of termination of employment. (Repealed effective July 1, 2024.)

A. The department shall issue a license for a private investigations manager to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) possesses a current license in good standing as a private investigator;
- (2) has successfully passed an examination required by department rules;
- (3) is employed by the private investigation company that the applicant is being licensed to manage; and
- (4) meets other requirements set forth in the rules of the department.

B. A private investigations manager who ceases to be employed by the private investigation company that the manager is licensed to manage, before leaving the company, shall surrender the private investigations manager's license to the owner, officer or director who is required to temporarily take over the management of the private investigation company. The owner, officer or director who temporarily takes over managing the private investigation company within thirty days of the termination from employment of the private investigations manager shall:

- (1) notify the department of the termination of the employment of the private investigations manager;
- (2) submit the surrendered license; and
- (3) submit an application to the department naming a new private investigations manager, who shall not begin to perform the duties of a private investigations manager until and unless the department grants the applicant a private investigations manager's license.

C. Failure to notify the department within thirty days of the private investigations manager's termination from employment subjects the license of the private investigation company to suspension or revocation by the department.

D. Reinstatement of the private investigation company's license may occur only upon the filing of an application for reinstatement and payment of the reinstatement fee.

History: Laws 2007, ch. 115, § 9.

Cross references. — For definition of "private investigations manager", see 61-27B-2 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 9 was enacted as a new section 61-27A-6.2 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new

section 61-27B-9 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-10. Private patrol operator; requirements for licensure. (Repealed effective July 1, 2024.)

A. The department shall issue a license for a private patrol operator to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) is at least twenty-one years of age;
- (2) is of good moral character;
- (3) has successfully passed an examination as required by department rules;
- (4) has not been convicted of a felony offense, an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;
- (5) has at least three years' experience of actual work performed as a security guard or an equivalent position, one year of which shall have been in a supervisory capacity. The experience shall have been acquired within five years preceding the filing of the application with the department. Years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from the applicant's employers and shall be subject to independent verification by the department as it determines is warranted. The burden of proving necessary experience is on the applicant;
- (6) is firearm certified, if the position will require being armed with a firearm; and
- (7) meets other requirements set forth in rules of the department.

B. A private patrol operator may not investigate acts except those that are incidental to a theft, embezzlement, loss, misappropriation or concealment of property or other item that the private patrol operator has been engaged or hired to protect, guard or watch.

History: Laws 2007, ch. 115, § 10.

Compiler's note. — Laws 2007, ch. 115, § 10 was enacted as a new section 61-27A-6.3 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-10 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-11. Private patrol company; requirements for licensure. (Repealed effective July 1, 2024.)

A. The department shall issue a license for a private patrol company to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) if an individual, is of good moral character; or if a legal business entity, the owners, officers or directors of the entity are of good moral character;
- (2) if an individual, has not been convicted of a felony offense, an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards, or if a legal business entity, the owners, officers or directors of the entity, either singly or collectively, have not been convicted of a felony offense, an offense involving dishonesty or an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and have not been found to have violated professional ethical standards;
- (3) has an owner or a licensed private patrol operations manager who manages the daily operations of the private patrol company;
- (4) maintains a physical location in New Mexico where records are maintained and made available for department inspection;
- (5) maintains a New Mexico registered agent if the applicant is a private patrol company located outside of New Mexico; and
- (6) meets all other requirements set forth in the rules of the department.

B. The owner or the chief executive officer of a private patrol company shall maintain a general liability certificate of insurance in an amount required by the department. The department shall suspend the license issued pursuant to this section of a private patrol company that fails to maintain an effective general liability certificate of insurance as required. The department shall not reinstate the license of a private patrol company that has had its license suspended pursuant to this subsection until an application is submitted to the department with the necessary fees and a copy of the private patrol company's general liability certificate of insurance newly in effect. The department may deny an application for reinstatement of a private patrol company's license, notwithstanding the applicant's compliance with this subsection for:

- (1) a reason that would justify a denial to issue a new private patrol company license or that would be cause for a suspension or revocation of a private patrol company's license; or
- (2) the performance by the applicant of an act requiring a license issued pursuant to the Private Investigations Act [61-27B-1 NMSA 1978] while the applicant's license is under suspension for failure to maintain the applicant's general liability certificate of insurance in effect.

History: Laws 2007, ch. 115, § 11.

Cross references. — For definition of "private patrol company", see 61-27B-2 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 11 was enacted as a new section 61-27A-6.4 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new

section 61-27B-11 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-12. Private patrol operations manager; requirement for licensure; notification of department in event of termination of employment. (Repealed effective July 1, 2024.)

A. The department shall issue a license for a private patrol operations manager to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) possesses a current license in good standing as a private patrol operator or a registration as a level three security guard;

- (2) has successfully passed an examination required by department rule;
- (3) is employed by the private patrol company that the applicant is being licensed to manage; and
- (4) meets other requirements set forth in the rules of the department.

B. A private patrol operations manager who ceases to be employed by the private patrol company that the manager is licensed to manage, before leaving the company, shall surrender the private patrol operations manager's license to the owner, officer or director who is required to temporarily take over the management of the private patrol company. The owner, officer or director who temporarily takes over managing the private patrol company within thirty days of the termination from employment of the private patrol operations manager shall:

- (1) notify the department of the termination of the employment of the private patrol operations manager;
- (2) submit the surrendered license; and
- (3) submit an application to the department naming a new private patrol operations manager, who shall not begin to perform the duties of a private patrol operations manager until the department grants the applicant a private patrol operations manager's license.

C. Failure to notify the department within thirty days of the private patrol operations manager's termination from employment subjects the license of the private patrol company to suspension or revocation by the department.

D. Reinstatement of the private patrol company's license may occur only upon the filing of an application for reinstatement and payment of the reinstatement fee.

History: Laws 2007, ch. 115, § 12.

Compiler's note. — Laws 2007, ch. 115, § 12 was enacted as a new section 61-27A-6.5 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-12 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-13. Polygraph examiner. (Repealed effective July 1, 2024.)

The department shall issue a license as a polygraph examiner to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- A. is at least eighteen years of age;
- B. is of good moral character;
- C. possesses a high school diploma or its equivalent;
- D. has not been convicted of a felony involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;
- E. has graduated from an accredited polygraph examiners course approved by the department;
- F. has:
 - (1) completed a probationary operational competency period and passed an examination of ability approved by the department to practice polygraphy; or
 - (2) submitted proof of holding, for a minimum of two years immediately preceding the date of application, a current license to practice polygraphy in another jurisdiction whose standards are equal to or greater than those in New Mexico; and
- G. meets other requirements set forth in the rules of the department.

History: Laws 2007, ch. 115, § 13.

Cross references. — For definition of "polygraph examiner", see 61-27B-2 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 13 was enacted as a new section 61-27A-6.6 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-13 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

ANNOTATIONS

Prerequisites to admissibility at trial. — Stipulation by the parties to a polygraph test or the absence of

objection thereto at trial are not prerequisites to the admission into evidence of the results of such tests. *State v. Dorsey*, 1975-NMSC-040, 88 N.M. 184, 539 P.2d 204 (decided under prior law) (now see Rule 11-707 NMRA).

Licensed examiner required. — The proponent of polygraph evidence must show that the polygraph examiner was licensed. *State v. Sanders*, 1994-NMSC-043, 117 N.M. 452, 872 P.2d 870 (decided under prior law) (now see Rules 11-702 and 11-707 NMRA).

Standard of care. — Polygraphers are professionals subject to a malpractice standard of care, not just a "reasonable man" standard. *Lewis v. Rodriguez*, 1988-NMCA-062, 107 N.M. 430, 759 P.2d 1012.

Law reviews. — For article, "The Admissibility of Scientific Evidence Under the New Mexico and Federal Rules of Evidence," see 6 N.M.L. Rev. 187 (1976).

For note, "Lie Detector Evidence - New Mexico Court of Appeals Holds Voice-Stress Lie Detector Evidence Conditionally Admissible: Simon Neustadt Family Center, Inc. v. Bludworth," see 13 N.M.L. Rev. 703 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 4.

Validity and construction of statutes licensing or otherwise regulating operators of polygraph or similar devices,

32 A.L.R.3d 1324.

53 C.J.S. Licenses § 34.

For article, "Survey of New Mexico Law, 1982-83: Evidence," see 14 N.M.L. Rev. 161 (1984).

Physiological or psychological truth and deception tests, 23 A.L.R.2d 1306, 53 A.L.R.3d 1005, 47 A.L.R.4th 1202, 77 A.L.R.4th 927.

Validity and construction of statutes licensing or otherwise regulating operators of polygraph or similar devices, 32 A.L.R.3d 1324.

Validity and construction of statute prohibiting employers from suggesting or requiring polygraph or similar tests as condition of employment or continued employment, 23 A.L.R.4th 187.

Admissibility of lie detector test results, or of offer or refusal to take test, in attorney disciplinary proceeding, 79 A.L.R.4th 576.

61-27B-14. Private investigations employee; registration; requirements. (Repealed effective July 1, 2024.)

A. On or after July 1, 2007, every individual who seeks employment or is currently employed as a private investigations employee or who provides services on a contract basis to a private investigation company shall file an application for registration as a private investigations employee with the department.

B. The department shall issue a registration for a private investigations employee to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) is at least twenty-one years of age;
- (2) is of good moral character;
- (3) possesses a high school diploma or its equivalent;
- (4) has successfully completed an examination as required by department rule;
- (5) has not been convicted of a felony involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;
- (6) shall be employed by, or shall contract with a private investigation company to provide investigation services for, a private investigation company, under the direct control and supervision of a private investigator; and
- (7) meets other requirements set forth in rules of the department.

C. If the contract or employment of a private investigations employee with a private investigation company terminates for any reason, the registration of the individual as a private investigations employee immediately terminates. The private investigations employee shall turn over the employee's registration to the private investigation company upon ceasing employment with that company.

D. A private investigation company shall notify the department within thirty days from the date of termination of employment of a private investigations employee of the employment termination and return the employee's registration to the department.

History: Laws 2007, ch. 115, § 14.

Cross references. — For definition of "private investigation employee," see 61-27B-2 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 14 was enacted as a new section 61-27A-6.7 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new

section 61-27B-14 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-15. Security guard; levels of registration. (Repealed effective July 1, 2024.)

A. A security guard shall be registered at one of the three levels enumerated in this section that are based on experience, age and other qualifications of the registrant:

- (1) level one is the entry level registration for security guards who will be working in a position not requiring the registrant to carry arms;
- (2) level two is the intermediate level registration for security guards who are required to be armed but not with firearms; and
- (3) level three is the advanced level registration for security guards who may be required to be armed with a firearm.

B. Each security guard shall receive a card issued by the department in the security guard's name with a definite expiration date that shall be carried by the security guard at all times when the security guard is performing duties that require the security guard to be registered pursuant to the provisions of this section. A security guard is not required to obtain a new card each time the security guard changes employment.

History: Laws 2007, ch. 115, § 15.

Cross references. — For definition of "security guard", see 61-27B-2 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 15 was enacted as a new section 61-27A-6.8 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new

section 61-27B-15 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-16. Security guard; level one; registration; requirements. (Repealed effective July 1, 2024.)

A. On or after July 1, 2007, every individual seeking employment or employed as a level one security guard shall file an application for registration with the department.

B. The department shall issue a registration for a level one security guard to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) is at least eighteen years of age;
- (2) is of good moral character;
- (3) has successfully completed an examination as required by department rule;
- (4) has not been convicted of a felony or an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;
- (5) has completed a curriculum approved in department rule consisting of level one security guard training prior to being placed on a guard post for the first time as a level one security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act [21-23-1 NMSA 1978];

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department; or

(c) any other department-approved educational institution using a curriculum approved by the department and complying with department standards set forth in department rules;

(6) is employed by a private patrol company under the direct supervision of a licensed private patrol operator, a level three security guard or a private patrol operations manager; and

(7) meets other requirements set forth in department rules.

C. A private patrol company shall notify the department within thirty days from the date of termination of a level one security guard of the employment termination.

History: Laws 2007, ch. 115, § 16.

Compiler's note. — Laws 2007, ch. 115, § 16 was enacted as a new section 61-27A-6.9 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-16 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-17. Security guard; level two; registration; requirements. (Repealed effective July 1, 2024.)

A. On or after July 1, 2007, every individual seeking employment or employed as a level two security guard shall file an application for registration with the department.

B. The department shall issue a registration for a level two security guard to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) meets the requirements to be granted registration as a level one security guard and maintains in good standing a current registration as a level one security guard;
- (2) has successfully completed an examination as required by department rule;
- (3) possesses a high school diploma or its equivalent;
- (4) in addition to the training required to be registered as a level one security guard, has completed a curriculum approved in department rule of level two security guard training prior to being placed on a guard post for the first time as a level two security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act [21-28-1 NMSA 1978];

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and complying with department standards set forth in department rules;

(5) is employed by a private patrol company under the direct supervision of a licensed private patrol operator, a level three security guard or a private patrol operations manager; and

(6) meets other requirements set forth in department rules.

C. A private patrol company shall notify the department within thirty days from the date of termination of a level two security guard of the employment termination.

History: Laws 2007, ch. 115, § 17.

Compiler's note. — Laws 2007, ch. 115, § 17 was enacted as a new section 61-27A-6.10 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-17 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-18. Security guard; level three; registration; requirements. (Repealed effective July 1, 2024.)

A. On or after July 1, 2007, every individual seeking employment or employed as a level three security guard shall file an application for registration with the department.

B. The department shall issue a registration for a level three security guard to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) is at least twenty-one years of age;
- (2) meets the requirements to be granted registration as a level two security guard and maintains in good standing a current registration as a level two security guard;
- (3) has successfully completed an examination as required by department rule;

(4) possesses a high school diploma or its equivalent;

(5) in addition to the training required to be registered as a level two security guard and before the applicant shall be placed for the first time at a guard post as a level three security guard, has completed a curriculum approved by the department consisting of the minimum training for firearm certification prescribed by the department; provided that the additional training required by the department is provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and complying with department standards set forth in department rules;

(6) is firearm certified by the New Mexico law enforcement academy or the national rifle association;

(7) is employed by a private patrol company under the direct supervision of a licensed private patrol operator, another level three security guard or a private patrol operations manager;

(8) beginning on July 1, 2009, has successfully passed a psychological evaluation as prescribed by the department to determine suitability for carrying firearms; and

(9) meets other requirements set forth in department rules.

C. A private patrol company shall notify the department within thirty days from the date of termination of a level two security guard of the employment termination.

History: Laws 2007, ch. 115, § 18.

Compiler's note. — Laws 2007, ch. 115, § 18 was enacted as a new section 61-27A-6.11 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-18 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-19. Special event permit; nonresident security guard procedure; qualifications; prohibited (Repealed effective July 1, 2024.)

A. A private patrol company employing a nonresident security guard temporarily for a special event shall apply to the department for and may be issued a special event permit for each nonresident security guard qualified to be employed at the special event.

B. A special event permit is issued for a specific nonresident security guard and a specific special event and shall not be transferred to another security guard or used for a special event other than for the special event for which the permit is issued.

C. To be issued a special event permit, a private patrol company shall provide the department with a description of the special event, its location and the dates on which the temporary nonresident security guard will be employed to provide services at the special event. A special event permit shall bear the name of the private patrol company and contact information, the name of the nonresident security guard, the name of the special event for which it is issued, the dates of the special event and other pertinent information required by the department.

D. A special event permit shall be issued only to an individual who qualifies for a level one or higher security guard registration and who:

(1) is not a resident of New Mexico;

(2) does not hold a registration as a security guard in New Mexico; and

(3) meets other requirements specified by the department.

E. A special event permit requiring a security guard to carry a firearm shall only be issued to an individual who is qualified to be registered as a level three security guard.

F. It is a violation of the Private Investigations Act [61-27B-1 NMSA 1978] for a private patrol company to circumvent the registration process for permanent or long-term part-time employment of security guards through use of the provisions of this section.

History: Laws 2007, ch. 115, § 19.

Compiler's note. — Laws 2007, ch. 115, § 19 was enacted as a new section 61-27A-6.12 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-19 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-20. Fees. (Repealed effective July 1, 2024.)

A. Except as provided in Section 61-1-34 NMSA 1978, the department shall establish a schedule of reasonable fees as follows:

- (1) private investigator fees:
 - (a) application fee, not to exceed one hundred dollars (\$100);
 - (b) initial private investigator's license fee or license renewal fee, not to exceed three hundred dollars (\$300); and
 - (c) initial private investigations manager license fee or license renewal fee, not to exceed two hundred dollars (\$200);
- (2) private patrol operator fees:
 - (a) application fee, not to exceed one hundred dollars (\$100);
 - (b) initial private patrol operator's license fee or license renewal fee, not to exceed three hundred dollars (\$300); and
 - (c) initial private patrol operations manager license fee or license renewal fee, not to exceed two hundred dollars (\$200);
- (3) security guard fees:
 - (a) level one or level two security guard registration fee or registration renewal fee, not to exceed fifty dollars (\$50.00); and
 - (b) level three security guard registration fee or registration renewal fee, not to exceed seventy-five dollars (\$75.00);
- (4) polygraph examiners:
 - (a) application fee, not to exceed one hundred dollars (\$100);
 - (b) initial polygraph examiner's license fee or license renewal fee, not to exceed four hundred dollars (\$400); and
 - (c) examination fee, not to exceed one hundred dollars (\$100); and
 - (5) other fees applying to private investigators, private patrol operators and polygraph examiners:
 - (a) change in license fee, not to exceed two hundred dollars (\$200);
 - (b) late fee on license or registration renewals, not to exceed one hundred dollars (\$100);
 - (c) special event permit fee, not to exceed one hundred dollars (\$100); and
 - (d) special event license fee for a private patrol company, not to exceed fifty dollars (\$50.00).

B. Fees charged by the department shall not be increased prior to fiscal year 2009.

History: Laws 2007, ch. 115, § 20; 2020, ch. 6, § 55.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 20 was enacted as a new section 61-27A-7.1 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-20 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

61-27B-21. License and registration renewal. (Repealed effective July 1, 2024.)

A. A license or registration granted pursuant to the provisions of the Private Investigations Act [61-27B-1 NMSA 1978] shall be renewed by the department annually unless the term of the license is set by the department in rule to be a longer period.

B. A licensee or registrant with an expired license or registration shall not perform an activity for which a license or registration is required pursuant to the Private Investigations Act until the license or registration has been renewed or reinstated.

C. The department may require proof of continuing education credits or other proof of competency as a requirement of renewal or reinstatement of a license or registration.

D. A license or registration issued to a person pursuant to the Private Investigations Act shall not be transferred or assigned.

History: Laws 2007, ch. 115, § 21.

Compiler's note. — Laws 2007, ch. 115, § 21 was enacted as a new section 61-27A-8.1 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-21 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-22. Display of license; notification of changes. (Repealed effective July 1, 2024.)

A. A license shall at all times be posted in a conspicuous place in the principal place of business in New Mexico of the licensee.

B. A copy of the registration of each registrant employed by a private investigation company or a private patrol company shall be maintained in the main New Mexico office of the company and in the branch office in which the registrant works.

C. A registration card issued by the department shall at all times be in the possession of and located on the person of a registrant when working.

D. A security guard shall wear the registration card on the outside of the guard's uniform so that the card is visible to others.

E. A licensee, including owners, officers or directors of a private investigation company or a private patrol company, or a registrant shall notify the department immediately in writing of a change in the mailing or contact address of the licensee or registrant.

F. Failure to notify the department within thirty days of changes required to be reported pursuant to this section or failure to carry or display a registration as required is grounds for suspension of a license or registration.

History: Laws 1993, ch. 212, § 9; § 61-27A-9 recompiled as § 61-27B-22; Laws 2007, ch. 115, § 22.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, adds new Subsections B to F to require a registrant to display

a copy of his registration in the main New Mexico office of the company and in the branch office where the registrant works, carry or wear a registration card issued by the department, and immediately notify the department of changes of address and provides that a violation of this section is grounds for suspension of a license or registration.

61-27B-23. General operations provisions of companies; management; liability for employees' conduct; maintenance of records required; required and permitted activities; allowed categories of unlicensed employees. (Repealed effective July 1, 2024.)

A. An owner of a private investigation company providing services in New Mexico shall operate, direct, control and manage that company provided that the owner is licensed as a private investigator. An owner of a private investigation company who is not licensed as a private investigator shall employ a private investigator as a private investigations manager and shall turn over the operation, direction, control and management of the private investigation company to that manager.

B. An owner of a private patrol company providing services in New Mexico shall operate, direct, control and manage that company, provided that the owner is licensed as a private patrol operator or registered as a level three security guard. An owner of a private patrol company who is not licensed as a private patrol operator or registered as a level three security guard shall employ a private patrol operations manager and shall turn over the operation, direction, control and management of the private patrol company to that manager.

C. A private investigation company or a private patrol company shall not conduct business under a fictitious name until the company has obtained the authorization for use of the name from the department. The department shall not authorize the use of a fictitious name that may generate public confusion with the name of a public officer or agency or the name of an existing private investigation company or private patrol company.

D. A private investigation company is liable for the conduct of the company's employees, including the conduct of its private investigations manager.

E. A private patrol company is liable for the conduct of the company's employees, including the conduct of its private patrol operations manager.

F. A private investigation company or a private patrol company shall maintain records of the qualifications, performance and training of all of its current and former employees as required by the department. The records are subject to inspection by the department upon reasonable notice to the owner or private investigations manager or private patrol operations manager.

G. Except as otherwise provided in this section, every employee of a licensed private investigation company or private patrol company shall be licensed or registered by the department as employees of the company with which the employee is employed; provided, however, that a licensee or registrant may work for more than one company concurrently.

H. A licensee or registrant shall notify the department in writing within thirty days of each change in the licensee's or registrant's employment by filing an amendment to the licensee's or registrant's application obtained from the department. If a licensee or registrant ceases to be employed by a private investigation company or a private patrol company, the licensee or registrant shall notify the department in writing within thirty days from the date the licensee or registrant ceases employment with that company.

I. A private investigation company or a private patrol company shall notify the department within thirty days of a change in ownership structure or, if a corporation, a change in the membership of the board of directors.

J. Employees of a private investigation company or a private patrol company who are engaged exclusively to perform stenographic, typing, word processing, secretarial, receptionist, accounting, bookkeeping, information technology or other business applications or support functions and who do not perform the work of a private investigator, a private patrol operator or a security guard are not required to be licensed or registered pursuant to the Private Investigations Act [61-27B-1 NMSA 1978].

K. An individual who is not licensed or qualified to be employed as a private investigations manager or a private patrol operations manager shall not be employed to perform the duties required of those managers.

History: Laws 2007, ch. 115, § 23.

Compiler's note. — Laws 2007, ch. 115, § 23 was enacted as a new section 61-27A-10.1 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-23 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-24. Bond required. (Repealed effective July 1, 2024.)

A. A private investigation company shall file with the department a surety bond in the amount of ten thousand dollars (\$10,000) executed by a surety company authorized to do business in this state.

B. The owner or the chief executive officer of a private investigation company that provides personal protection or bodyguard services or the owner or the chief executive office of a private

patrol company shall maintain a general liability certificate of insurance in an amount required by the department.

C. A surety bond in the amount of ten thousand dollars (\$10,000) or a general liability certificate of insurance executed and filed with the department pursuant to the Private Investigations Act [61-27B-1 NMSA 1978] shall remain in force until the surety company issuing the bond or the certificate has terminated future indemnity by notice to the department.

History: Laws 1993, ch. 212, § 11; § 61-27A-11 recompiled as § 61-27B-24; Laws 2007, ch. 115, § 24.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, requires a private investigation company to file a surety bond in the amount of \$10,000 and to maintain a general liability

certificate of insurance in an amount required by the department.

ANNOTATIONS

Face amount of bond represents total liability of surety regardless of the number of claims which may be filed against the licensee. 1965 Op. Att'y Gen. No. 65-187.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 48, 49, 55.
53 C.J.S. Licenses § 42.

61-27B-25. Prohibited acts. (Repealed effective July 1, 2024.)

A. A licensee or registrant may divulge to a law enforcement officer or district attorney, the attorney general or the attorney general's representatives information the licensee or registrant acquires concerning a criminal offense, but the licensee or registrant shall not divulge to any other person, except as the licensee or registrant is required by law, information acquired by the licensee or registrant except at the direction of the licensee's or registrant's employer or the client for whom the information was obtained.

B. No licensee or registrant shall knowingly make a false report to the licensee's or registrant's employer or the client for whom the information was being obtained.

C. No written report shall be submitted to a client except by the licensee, or a person authorized by the licensee, and the person submitting the report shall exercise diligence in ascertaining whether the facts and information of the report are true and correct.

D. No private investigator, private investigations manager or private investigations employee shall use a badge in connection with the official activities of the licensee's or employee's employment for a private investigation company.

E. No licensee or registrant shall use a title or wear a uniform, use an insignia, use an identification card or make a statement with the intent to give an impression that the licensee or registrant is connected in any way with the federal or state government or a political subdivision of either.

F. No private patrol operator licensee, private patrol operations manager or level three security guard shall use a badge except when engaged in guard or patrol work and while wearing a uniform.

G. No licensee or registrant shall appear as an assignee party in a proceeding involving a claim and delivery action to recover or possess property or action for foreclosing a chattel mortgage, mechanic's lien, materialman's lien or any other lien.

H. A polygraph examiner shall not ask questions during the course of a polygraph examination relative to sexual affairs of an examinee, the examinee's race, creed, religion or union affiliation or an activity not previously and specifically agreed to by written consent.

History: Laws 1993, ch. 212, § 12; § 61-27A-12 recompiled as § 61-27B-25; 2007, ch. 115, § 25.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, prohibits the use of badges by private investigations managers, private investigations employees, private patrol operations managers and level three security guards.

ANNOTATIONS

Liability for malicious prosecution. — Since a defendant cannot be held liable for malicious prosecution unless he takes some active part in instigating or encouraging prosecution, a private investigator's submission of a copy of his report concerning the plaintiff's activities to the district attorney's office for possible further investigation, which he is authorized to do under this section, does not amount to the institution of criminal proceedings. *Zamora v. Creamland Dairies, Inc.*, 1987-NMCA-144, 106 N.M. 628, 747 P.2d 923.

61-27B-26. Denial, suspension or revocation of license or registration. (Repealed effective July 1, 2024.)

In accordance with procedures contained in the Uniform Licensing Act [61-1-1 NMSA 1978], the department may deny, suspend or revoke a license or registration held or applied for under the Private Investigations Act [61-27B-1 NMSA 1978] or reprimand or place on probation a licensee or registrant upon grounds that the licensee, registrant or applicant:

- A. made a false statement or gave false information in connection with an application for a license or registration or renewal or reinstatement of a license or registration;
- B. violated a provision of the Private Investigations Act;
- C. violated a rule of the department adopted pursuant to the Private Investigations Act;
- D. has been convicted of a felony or any crime involving dishonesty or illegally using, carrying or possessing a deadly weapon;
- E. impersonated or permitted or aided and abetted an employee of a private investigation company or private patrol company to impersonate a law enforcement officer or employee of the United States or of a state or political subdivision of either;
- F. committed or permitted an employee of a private investigation company or a private patrol company to commit an act while the license or registration of the person licensed or registered pursuant to the Private Investigations Act was expired that would be cause for the suspension or revocation of a license or registration or grounds for the denial of an application for a license or registration;
- G. willfully failed or refused to render to a client services or a report as agreed between the parties, for which compensation has been paid or tendered in accordance with the agreement of the parties;
- H. committed assault, battery or kidnapping or used force or violence on a person without justification;
- I. knowingly violated or advised, encouraged or assisted the violation of a court order or injunction in the course of business of the licensee or registrant;
- J. knowingly issued a worthless or otherwise fraudulent payroll check that is not redeemed within two days of denial of payment by a bank;
- K. has been chronically or persistently inebriated or addicted to the illegal use of dangerous or narcotic drugs;
- L. has been adjudged mentally incompetent or insane by regularly constituted authorities;
- M. while unlicensed, committed or aided and abetted the commission of any act for which a license is required under the Private Investigations Act; or
- N. has been found to have violated the requirements of a state or federal labor, tax or employee benefit law or rule.

History: Laws 1993, ch. 212, § 13; § 61-27A-13 recompiled as § 61-27B-26; Laws 2007, ch. 115, § 26.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, authorizes the department to reprimand or place on probation licensees and registrants on grounds that include dishonesty and violations of state or federal labor, tax or employee benefit law or rule.

ANNOTATIONS

Effect of gubernatorial pardon on eligibility for license. — An unconditional gubernatorial pardon allows a person convicted of a felony to be eligible for licensure as a private investigator. However, if authorized by statute or regulation, a pardoned felon's character in the acts underlined the conviction may be considered in certification or licensing. 1992 Op. Att'y Gen. No. 92-09.

61-27B-27. Hearing; penalties. (Repealed effective July 1, 2024.)

A. A person who is denied a license or registration or who has a license or registration suspended or revoked shall be entitled to a hearing before the department if within twenty days after the denial, suspension or revocation a request for a hearing is received by the department. The procedures of the Uniform Licensing Act shall [61-1-1 through 61-1-31 NMSA 1978] be followed pertaining to the hearing to the extent that they do not conflict with the provisions of the Private Investigations Act.

B. In accordance with the provisions of the Uniform Licensing Act, and in addition to other penalties provided by law, the department may impose the following:

- (1) for a violation of the Private Investigations Act, a civil penalty not to exceed one thousand dollars (\$1,000) for each violation; and
- (2) against a person who is found by the department to be engaging in a practice regulated by the department without an appropriate license or registration, civil penalties not to exceed two thousand dollars (\$2,000).

History: Laws 1993, ch. 212, § 14; § 61-27A-14 recompiled as § 61-27B-27; Laws 2007, ch. 115, § 27; 2017, ch. 52, § 9.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2017 amendment, effective June 16, 2017, raised the maximum civil penalty for engaging in a practice

regulated by the department of regulation and licensing without a license from \$1,000 to \$2,000; and in Subsection B, Paragraph B(2), after "not to exceed", deleted "one thousand dollars (\$1,000)" and added "two thousand dollars (\$2,000)".

The 2007 amendment, effective July 1, 2007, adds a new Subsection B that authorizes the department to impose penalties.

61-27B-28. License not transferable. (Repealed effective July 1, 2024.)

A. A license or registration issued pursuant to the Private Investigations Act [61-27B-1 NMSA 1978] shall not be transferred or assigned.

B. The department shall adopt by rule procedures for changes in the name or management of a private investigation company or private patrol company. If the private investigation company or private patrol company fails to comply with the procedures established by department rule, the private investigation company or private patrol company shall be considered to be operating without a license.

History: Laws 1993, ch. 212, § 16; § 61-27A-16 recompiled as § 61-27B-28; Laws 2007, ch. 115, § 28.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, adds a new Subsection B that requires the department to adopt rules for changes in the name or management of a private investigation company or private patrol company.

61-27B-29. Local regulations. (Repealed effective July 1, 2024.)

The provisions of the Private Investigations Act [61-27B-1 NMSA 1978] shall not prevent the local authorities of a city or county by ordinance and within the exercise of the police power of the city or county from imposing local ordinances upon a street patrol special officer or on a person licensed or registered pursuant to the Private Investigations Act if the ordinances are consistent with that act.

History: Laws 1993, ch. 212, § 17; § 61-27A-17 recompiled as § 61-27B-29; Laws 2007, ch. 115, § 29.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, permits local authorities to impose local ordinances on persons licensed or registered under the Private Investigations Act.

ANNOTATIONS

Cities prohibited from regulating certain investigative businesses and occupations. — With the exception of this section, cities may not regulate the businesses and occupations which are included in the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1965 Op. Att'y Gen. No. 65-176.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 130.

53 C.J.S. Licenses §§ 9 to 12.

61-27B-30. Fund established. (Repealed effective July 1, 2024.)

A. The "private investigations fund" is created in the state treasury.

B. All license and registration fees received by the department pursuant to the Private Investigations Act [61-27B-1 NMSA 1978] shall be deposited in the fund and are appropriated to the department to be used for the administration and implementation of that act.

C. The state treasurer shall invest the fund as other state funds are invested, and all income derived from investment of the fund shall be credited to the fund.

D. All balances in the fund shall remain in the fund and shall not revert to the general fund.

E. The department shall administer the fund, and money in the fund shall be expended by warrant issued by the secretary of finance and administration on vouchers signed by the superintendent of regulation and licensing.

F. No more than five percent of the fund shall be used by the department for administration of the fund.

History: Laws 1993, ch. 212, § 18; § 61-27A-18 recompiled as § 61-27B-30; Laws 2007, ch. 115, § 30.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, creates the private investigations fund which is appropriated to the department and provides that no more than five percent of the fund shall be used for administration of the fund.

61-27B-31. Firearms. (Repealed effective July 1, 2024.)

A private investigator, a private patrol operator, a private investigations employee, a level three security guard or a private patrol operations employee may carry a firearm upon successful completion of the mandatory firearm training required by rules of the department.

History: Laws 2007, ch. 115, § 31.

Compiler's note. — Laws 2007, ch. 115, § 31 was enacted as a new section 61-27A-19.1 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-31 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-32. Penalties. (Repealed effective July 1, 2024.)

A. A person who engages in a business regulated by the Private Investigations Act [61-27B-1 NMSA 1978] who fraudulently makes a representation as being a licensee or registrant is guilty of a misdemeanor and if convicted shall be sentenced pursuant Section 31-19-1 NMSA 1978.

B. An individual who fraudulently represents that the individual is employed by a licensee is guilty of a petty misdemeanor and if convicted shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

C. A person who violates a mandatory requirement, as set forth by the department in rule, of the Private Investigations Act, is guilty of a petty misdemeanor except as provided in Subsection A of this section and if convicted shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

History: Laws 1993, ch. 212, § 20; § 61-27A-20 recompiled as § 61-27B-32; Laws 2007, ch. 115, § 32.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, see compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, provides that licensees and registrants who are convicted of committing the violations listed in this section shall be sentenced pursuant to 31-19-1 NMSA 1978.

61-27B-33. Reciprocity. (Repealed effective July 1, 2024.)

A. The department may enter into a reciprocity agreement with another state for the purpose of licensing or registering applicants to perform activities regulated by the Private Investigations Act [61-27B-1 NMSA 1978].

B. An applicant from another state at the time of application for licensure or registration in New Mexico shall be licensed or registered in that other state to perform the services for which the applicant is seeking a New Mexico license or registration.

C. The department may develop rules that allow for reciprocity on a temporary or limited basis without requiring an applicant licensed or registered in another state subject to a reciprocity agreement to be licensed or registered in New Mexico; provided that the state of licensure or registration:

- (1) has licensure or registration requirements that meet or exceed those of New Mexico;
- (2) has no record of disciplinary action taken against the applicant in the last year; and
- (3) can verify that the applicant has engaged in activities for at least one year in the state with reciprocity that are required to be licensed or registered pursuant to the Private Investigations Act.

History: Laws 2007, ch. 115, § 33.

Compiler's note. — Laws 2007, ch. 115, § 33 was enacted as a new section of the "Private Investigations Act. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-33 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-34. Background investigations. (Repealed effective July 1, 2024.)

A. The department shall adopt rules that:

- (1) are developed in conjunction with the department of public safety that require background investigations of all persons licensed or registered pursuant to the Private Investigations Act to determine if the person has a criminal history;
- (2) require all applicants for licensure or registration to be fingerprinted only upon initial licensure or registration on two fingerprint cards or electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation;
- (3) provide for an applicant to inspect or challenge the validity of the record developed by the background investigation if the applicant is denied a license or registration; and
- (4) establish a fee for fingerprinting and conducting a background investigation for an applicant.

B. Arrest record information received from the federal bureau of investigation and department of public safety shall be privileged and shall not be disclosed to individuals not directly involved in the decision affecting the specific applicant or employee.

C. The applicant shall pay the cost of obtaining criminal history information from the federal bureau of investigation and the department of public safety.

D. Electronic live scans may be used for conducting criminal history investigations.

History: Laws 2007, ch. 115, § 34; 2019, ch. 209, § 6.

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

The 2019 amendment, effective July 1, 2020, provided that applicants for licensure shall be fingerprinted only

upon initial licensure or registration; in Subsection A, in Paragraph A(2), after "fingerprinted", added "only upon initial licensure or registration".

61-27B-35. Temporary provision; transition.

A. A security guard, watchman, loss prevention officer or patrolman licensed pursuant to the Private Investigators and Polygraphers Act prior to July 1, 2007 shall apply for registration pursuant to the Private Investigations Act [61-27B-1 NMSA 1978] prior to October 31, 2007 to receive registration without meeting the examination or educational requirements of the Private Investigations Act.

B. Between July 1, 2007 and October 31, 2007, an individual shall be registered as a level three security guard without examination or further qualification by the regulation and licensing department if the individual:

(1) worked as a security guard, watchman, loss prevention officer or patrolman for the five years immediately preceding July 1, 2007 and was licensed by the regulation and licensing department to perform that work; and

(2) was authorized pursuant to the Private Investigators and Polygraphers Act prior to July 1, 2007 to carry a firearm in the course of the individual's employment.

C. A security guard, watchman, loss prevention officer or patrolman who is not qualified pursuant to Subsection B of this section to be registered as a level three security guard shall be registered by the regulation and licensing department as a level one security guard if the individual applies for registration pursuant to the Private Investigations Act between July 1, 2007 and October 31, 2007, except as provided in Subsection D of this section.

D. If the regulation and licensing department finds, upon application by a security guard, watchman, loss prevention officer or patrolman who is employed in that capacity prior to July 1, 2007, that the applicant has applied in a timely manner and presents exceptional circumstances, as determined by the regulation and licensing department, in which the applicant demonstrates cause for that applicant to be registered as a level two security guard, the department in its discretion may register the security guard applicant as a level two security guard without examination or further qualification.

E. A private investigator or private patrol operator holding a certificate of deposit or surety bond in the sum of two thousand dollars (\$2,000) shall be exempt from the bond provisions of the Private Investigations Act, provided that the private investigator's or private patrol operator's license remains current and the holder remains in good standing with the regulation and licensing department.

F. A rule adopted by the regulation and licensing department pursuant to the Private Investigators and Polygraphers Act shall remain in effect until the regulation and licensing department adopts rules to implement the Private Investigations Act.

G. The regulation and licensing department shall continue to register and license individuals pursuant to the Private Investigators and Polygraphers Act until July 1, 2007, or, if rules are not adopted by the regulation and licensing department to implement the Private Investigations Act by July 1, 2007, until the regulation and licensing department adopts rules to implement the Private Investigations Act. However, rules shall be adopted and the regulation and licensing department shall begin to license and register applicants pursuant to the Private Investigations Act no later than September 1, 2007.

H. Money in the private investigator and polygrapher fund is transferred on July 1, 2007 to the private investigations fund.

I. Except as provided in Subsections C and D of this section, a person licensed or registered pursuant to the Private Investigators and Polygraphers Act prior to July 1, 2007 shall be licensed or registered pursuant to the Private Investigations Act on or after July 1, 2007 at a level of licensure or registration equivalent to that level that the person held prior to July 1, 2007 without further training or examination; provided that the person:

(1) applies for licensure or registration pursuant to the Private Investigations Act no later than October 31, 2007;

(2) shall be subject to any disciplinary proceedings initiated prior to July 1, 2007 or disciplinary action resulting from the proceedings due to the licensee's or registrant's unethical conduct or actions or inactions taken in violation of the Private Investigators and Polygraphers Act; and

(3) remains otherwise eligible to be licensed or registered pursuant to the Private Investigations Act.

History: Laws 2007, ch. 115, § 36.

Compiler's note.—Laws 2007, ch. 115, § 36 was enacted as a new section of the Private Investigations Act. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-36 NMSA 1978. See the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal.—For delayed repeal of the section, see 61-27B-36 NMSA 1978.

Effective dates.—Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

61-27B-36. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The private investigations advisory board is terminated on July 1, 2023 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Private Investigations Act until July 1, 2024. Effective July 1, 2024, Chapter 61, Article 27B NMSA 1978 is repealed.

History: Laws 2007, ch. 115, § 35; 2011, ch. 48, § 1; 2017, ch. 52, § 11.

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

ARTICLE 28

Public Accountants

(Repealed by Laws 1992, ch. 10, § 30.)

61-28-1 to 61-28-34. Repealed.

Repeals. — Laws 1992, ch. 10, § 30 repeals 61-28-1 to 61-28-34, as enacted by Laws 1947, ch. 115, § 20; Laws 1963, ch. 43, § 27; and as amended by Laws 1983, ch. 15, §§ 5, 7, 10; Laws 1987, ch. 236, §§ 1-29; Laws 1987, ch.

333, § 11; and Laws 1988, ch. 23, § 1, relating to public accountants, effective May 20, 1992. For present comparable provisions, see 61-28B-1 NMSA 1978 et seq.

ARTICLE 28A

Public Accountancy

(Repealed by Laws 1999, ch. 179, § 31.)

61-28A-1 to 61-28A-28. Repealed.

Repeals. — Laws 1999, ch. 179, § 31 repeals 61-28A-1 to 61-28A-28 NMSA 1978, as enacted by Laws 1992, ch. 10, §§ 1, 2, 4 to 7, 10 to 12, 14, 16, 20 to 23, 25, 26 and 28 and Laws 1993, ch. 83, § 6, and as amended by Laws 1993, ch. 340, §§ 1 to 3 and 5 to 8 and Laws 1997, ch. 207, §§

1 and 2, relating to public accountancy, effective July 1, 1999. For provisions of former sections, see 1998 Cumulative Supplement and 1993 Replacement Pamphlet. For present comparable provisions, see 61-28B-1 NMSA et seq.

ARTICLE 28B

1999 Public Accountancy Act

Sec.

- 61-28B-1. Short title. (Repealed effective July 1, 2024.)
- 61-28B-2. Purpose. (Repealed effective July 1, 2024.)
- 61-28B-3. Definitions. (Repealed effective July 1, 2024.)
- 61-28B-4. Board created; terms; officers; meetings; reimbursement. (Repealed effective July 1, 2024.)
- 61-28B-5. Board; powers and duties. (Repealed effective July 1, 2024.)
- 61-28B-6. Fund created. (Repealed effective July 1, 2024.)
- 61-28B-7. Repealed.

Sec.

- 61-28B-8. Qualifications for a certificate as a certified public accountant. (Repealed effective July 1, 2024.)
- 61-28B-8.1. Fingerprinting; criminal history background checks. (Repealed effective July 1, 2024.)
- 61-28B-9. Issuance and renewal of certificate; maintenance of competency; nonresident maintenance of competency requirements. (Repealed effective July 1, 2024.)
- 61-28B-10. Repealed.

- Sec.
- 61-28B-11. Certificates issued to holders of a certificate, license or permit issued by another state. (Repealed effective July 1, 2024.)
- 61-28B-12. Registered public accountants and firms of registered public accountants. (Repealed effective July 1, 2024.)
- 61-28B-13. Firm permits to practice, attest experience, peer review. (Repealed effective July 1, 2024.)
- 61-28B-14. Appointment of secretary of state as agent. (Repealed effective July 1, 2024.)
- 61-28B-15. Enforcement procedures; investigations. (Repealed effective July 1, 2024.)
- 61-28B-16. Enforcement procedures; hearings by the board. (Repealed effective July 1, 2024.)
- 61-28B-17. Enforcement; unlawful acts. (Repealed effective July 1, 2024.)
- 61-28B-18. Exemptions; unlawful acts. (Repealed effective July 1, 2024.)
- 61-28B-19. Business names; prohibitions. (Repealed effective July 1, 2024.)
- Sec.
- 61-28B-20. Enforcement; administrative violations and remedies. (Repealed effective July 1, 2024.)
- 61-28B-21. Reinstatement. (Repealed effective July 1, 2024.)
- 61-28B-22. Criminal penalties. (Repealed effective July 1, 2024.)
- 61-28B-23. Single act evidence of practice. (Repealed effective July 1, 2024.)
- 61-28B-24. Confidential communications. (Repealed effective July 1, 2024.)
- 61-28B-25. Working papers; client records. (Repealed effective July 1, 2024.)
- 61-28B-26. Practice privilege and discipline for a certificate holder from a state whose accountancy statute is substantially equivalent. (Repealed effective July 1, 2024.)
- 61-28B-27. Fees. (Repealed effective July 1, 2024.)
- 61-28B-28. Criminal offender eligibility. (Repealed effective July 1, 2024.)
- 61-28B-29. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

61-28B-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 28B NMSA 1978 may be cited as the "1999 Public Accountancy Act".

History: Laws 1999, ch. 179, § 1.; 2007, ch. 219, § 1. The 2007 amendment, effective June 15, 2007, changes the statutory reference the act.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

ANNOTATIONS

Funds collected to be deposited with state treasurer. — All funds collected by the state board of public accountancy under authority of this article (now Chapter 61, Article 28, NMSA 1978) are public funds which must be deposited with the state treasurer. *N.M. State Bd. of Pub. Accountancy v. Grant*, 1956-NMSC-068, 61 N.M. 287, 299 P.2d 464 (decided under prior law).

Contributions withdrawn only through appropriations by legislature upon warrants. — Although there may be no language in any statute conferring upon

the state board of public accountancy authority to solicit members of its profession to make voluntary contributions, once such contributions are deposited in the state treasury, where they become commingled with other funds of the board, they can only be withdrawn through appropriations made by the legislature upon warrants drawn by the proper officer. *N.M. State Bd. of Pub. Accountancy v. Grant*, 1956-NMSC-068, 61 N.M. 287, 299 P.2d 464 (decided under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 1 et seq.

Regulation of accountants, 70 A.L.R.2d 433, 4 A.L.R.4th 1201.

Application of statute of limitations to actions for breach of duty in performing services of public accountant, 7 A.L.R.5th 852.

1 C.J.S. Accountants § 4 et seq.

61-28B-2. Purpose. (Repealed effective July 1, 2024.)

The purpose of the 1999 Public Accountancy Act [61-28B-1 to 61-28B-29 NMSA 1978] is to protect the public interest by regulating the practice of public accountancy.

History: Laws 1999, ch. 179, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-3. Definitions. (Repealed effective July 1, 2024.)

As used in the 1999 Public Accountancy Act:

A. "attest" means to provide the following services:

- (1) an audit or other engagement performed in accordance with the statements on auditing standards;
- (2) a review of a financial statement performed in accordance with the statement on standards for accounting and review services;
- (3) an engagement performed in accordance with the statements on standards for attestation engagements adopted by the board; and

(4) an engagement to be performed in accordance with the auditing standards of the public company accounting oversight board;

B. "board" means the New Mexico public accountancy board;

C. "certificate" means the legal recognition issued to identify a certified public accountant or a registered public accountant pursuant to the 1999 Public Accountancy Act or prior law;

D. "certified public accountant" means a person certified by this state or by another state to practice public accountancy and use the designation;

E. "compilation" means a service provided to management, applying accounting and financial reporting expertise, in the presentation of financial statements and reports without undertaking to obtain or provide assurance that there are no material modifications that should be made to the financial statements or reports to be in accordance with the applicable financial reporting framework;

F. "contingent fee" means a fee established for the performance of a service pursuant to an arrangement in which no fee will be charged unless a specific finding or result is attained or upon which the amount of the fee is dependent upon a finding or result. "Contingent fee" does not mean a fee set by the court or a public authority on a tax matter;

G. "director" means the executive director of the board;

H. "firm" means a sole proprietorship, professional corporation, partnership, limited liability company, limited liability partnership or other legal business entity that practices public accountancy;

I. "licensee" means a person, certified public accountant, certified public accountant firm, registered public accountant or registered public accountant firm authorized to do business in New Mexico pursuant to the provisions of the 1999 Public Accountancy Act or prior law;

J. "peer review" means a study, appraisal or review of one or more aspects of the professional work of a firm by a certified public accountant who is not affiliated with the firm being reviewed;

K. "permit" means the annual authority granted to practice as a certified public accountant firm or a registered public accountant firm;

L. "practice" means performing or offering to perform public accountancy for a client or potential client by a person who makes a representation to the public as being a permit holder or registered firm;

M. "public accountancy" means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters;

N. "registered public accountant" means a person who is registered by the board to practice public accountancy and use the designation;

O. "report" means a written communication issued by an accountant or an accountant firm that:

(1) when used in reference to an audit, review or examination service, expresses or disclaims an opinion or a conclusion as to whether subject matter is presented in accordance with specified criteria; and

(2) when used in reference to a compilation, agreed-upon procedures service or other service that is not an audit, review or examination service, includes a statement or implication that the accountant or accountant firm that issued the report has special knowledge or competence in accounting or attest services such as by the use of names or titles indicating that the person or firm is an accountant or an accountant firm or by the contents of the report itself; and

P. "substantial equivalency" means a determination by the board that the education, examination and experience requirements for certification of another jurisdiction are comparable to or exceed the requirements of Paragraph (1) of Subsection A of Section 61-28B-26 NMSA 1978.

History: Laws 1999, ch. 179, § 3; 2000, ch. 91, § 1; 2008, ch. 30, § 1; 2017, ch. 12, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

The 2017 amendment, effective June 16, 2017, added the definition of "compilation" to, and clarified certain

definitions in, the Public Accountancy Act; in Subsection A, in the introductory clause, after "the following", deleted "financial statement", and in Paragraph A(3), after "an", deleted "examination of prospective financial information" and added "engagement", and after "attestation engagements", added "adopted by the board"; added a new

Subsection E and redesignated the succeeding subsections accordingly; in Subsection I, after "licensee means a", added "person", and after "accountant firm", added "authorized to do business in New Mexico pursuant to the provisions of the 1999 Public Accountancy Act or prior law"; and in Subsection O, in the introductory clause, after "report means", deleted "an opinion or other writing that:" and added "a written communication issued by an accountant or an accountant firm that:", and deleted former Paragraphs O(1) through O(3) and added new Paragraphs O(1) and O(2).

The 2008 amendment, effective May 14, 2008, added Paragraph (4) of Subsection A and Subparagraph (a) of Paragraph (3) of Subsection N; deleted the definition of person and of specialty designation; and in Subsection O, changed the reference to the 1999 Public Accountancy Act to Subsection A of Section 61-28A-26 NMSA 1978.

The 2000 amendment, effective July 1, 2000, added a new Subsection E and redesignated the remaining subsections accordingly.

ANNOTATIONS

Generally, as to public accountant. — A public accountant is one who provides accounting or auditing, as opposed to bookkeeping, services on a fee basis, per diem or otherwise, for more than one employer. 1947-48 Op. Att'y Gen. No. 47-5050.

Providing auditing services for credit union league members. — An individual not registered or licensed as an accountant, who is employed by the New Mexico credit union league, and provides auditing services on behalf of the league for member credit unions, does not hold himself out to the public as a public accountant, nor does he violate the public accountancy provisions. 1969 Op. Att'y Gen. No. 69-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 1 et seq.

Construction and application of statutory provisions respecting persons who may prepare tax returns for others, 10 A.L.R.2d 1443.

Regulation of accountants, 70 A.L.R.2d 433, 4 A.L.R.4th 1201.

1 C.J.S. Accountants § 2.

61-28B-4. Board created; terms; officers; meetings; reimbursement. (Repealed effective July 1, 2024.)

A. The "New Mexico public accountancy board" is created. The board shall be administratively attached to the regulation and licensing department. The board shall consist of seven members appointed by the governor who are citizens of the United States and residents of New Mexico. Four members of the board shall be certified public accountants or registered public accountants who have practiced for at least five calendar years immediately preceding their appointment to the board. Three members shall represent the public and shall not have ever held a certificate or permit to practice public accountancy in any state and shall not have ever had a significant financial interest, direct or indirect, in the public accountancy profession or in a firm. Public members shall have professional or practical experience in the use of accounting services and financial statements, so as to be qualified to make judgments about the qualifications and conduct of persons subject to the provisions of the 1999 Public Accountancy Act [61-28B-1 NMSA 1978].

B. Members of the board shall serve for terms of three years or less, staggered in a manner that the terms of not more than three members expire on January 1 of each year; provided that members appointed and serving pursuant to prior law on the effective date of the 1999 Public Accountancy Act shall serve the remainder of their terms. A vacancy on the board shall be filled by appointment by the governor for the unexpired term. Upon the expiration of a member's term of office, he shall continue to serve until his successor has been appointed and qualified. A professional member of the board whose certificate is suspended or revoked shall automatically cease to be a member of the board. The governor may remove a member of the board for neglect of duty or other just cause.

C. The board shall elect annually from among its members a chairman and other officers as the board determines. The board shall meet at times and places as fixed by the board. A majority of the board constitutes a quorum.

D. Members of the board may receive per diem and travel expenses as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

History: Laws 1999, ch. 179, § 4; 2003, ch. 408, § 28.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

Transfers and references. — Laws 1999, ch. 179, § 30, effective July 1, 1999, provides that on July 1, 1999, all personnel, money, appropriations, property, records and other things of value belonging to the New Mexico state board of public accountancy shall be transferred to

the New Mexico public accountancy board. All contracts, including certificates and registrations, in effect for the New Mexico state board of public accountancy shall be binding on the New Mexico public accountancy board. All references in law to the New Mexico state board of public accountancy shall be construed as references to the New Mexico public accountancy board.

The 2003 amendment, effective July 1, 2003, substituted "The board shall be administratively attached to the regulation and licensing department. The board shall consist" for "consisting" following "is created" near the beginning of Subsection A.

ANNOTATIONS

Appointment to unexpired term. — Since plaintiff could serve on the accountancy board only for the

remainder of the unexpired term to which she was appointed on January 24, 2002, as the appointing governor did not have authority to appoint plaintiff to a term beyond December 31, 2002, the succeeding governor had authority to appoint plaintiff's successor. *Roberts v. Richardson*, 2005-NMSC-007, 137 N.M. 226, 109 P.3d 765.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 C.J.S. Accountants § 9.

61-28B-5. Board; powers and duties. (Repealed effective July 1, 2024.)

A. The board may:

- (1) appoint committees or persons to advise or assist it in carrying out the provisions of the 1999 Public Accountancy Act;
- (2) retain its own counsel to advise and assist it in addition to advice and assistance provided by the attorney general;
- (3) contract, sue and be sued and have and use a seal;
- (4) cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of the 1999 Public Accountancy Act and comparable acts of other states; and
- (5) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the provisions of the 1999 Public Accountancy Act, including rules governing the administration and enforcement of the 1999 Public Accountancy Act and the conduct of certificate and permit holders.

B. The board shall:

- (1) maintain a registry of the names and addresses of certificate and permit holders;
- (2) develop, in conjunction with the department of public safety, rules requiring a criminal history background check of an applicant for initial or reciprocal certification in New Mexico as provided for in the 1999 Public Accountancy Act; and
- (3) conduct disciplinary or licensure proceedings in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

History: Laws 1999, ch. 179, § 5; 2003, ch. 408, § 29; 2007, ch. 219, § 2; 2022, ch. 39, § 95.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico public accountancy board is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; in Subsection A, Paragraph A(5), deleted "adopt and file" and added "promulgate rules", after

"in accordance with", deleted "the Uniform Licensing Act and", and after "State Rules Act", deleted "rules"; and in Subsection B, added Paragraph B(3).

The 2007 amendment, effective June 15, 2007, adds Paragraph (2) of Subsection B.

The 2003 amendment, effective July 1, 2003, deleted former Paragraph A(1), concerning employment of director, and redesignated the subsequent paragraphs accordingly.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-6. Fund created. (Repealed effective July 1, 2024.)

A. The "public accountancy fund" is created in the state treasury. All money received by the board and interest earned on investment of the fund shall be credited to the fund.

B. Payments from the public accountancy fund shall be made upon warrants of the secretary of finance and administration pursuant to vouchers issued by the director in accordance with the budget approved by the department of finance and administration.

C. Money in the fund shall be used only to pay the expenses of carrying out the provisions of the 1999 Public Accountancy Act [61-28B-1 NMSA 1978] and rules adopted pursuant to that act.

D. All amounts paid into the fund are appropriated for expenditure by the board for the necessary expenses of the board for execution of the provisions of the Public Accountancy Act. The balance remaining in the fund at the end of a fiscal year shall accumulate to the credit of the fund for use by the board for necessary expenses.

History: Laws 1999, ch. 179, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-7. Repealed.

Repeals. — Laws 2017, ch. 12, § 5 repealed 61-28B-7 NMSA 1978, as enacted by Laws 1999, ch. 179, § 7, relating to qualifications for a certificate as a certified public

accountant, effective June 16, 2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

61-28B-8. Qualifications for a certificate as a certified public accountant. (Repealed effective July 1, 2024.)

A. An applicant for a certificate shall complete the application form provided by the board and demonstrate to the board's satisfaction that the applicant:

- (1) is of good moral character and lacks a history of dishonest or felonious acts; and
- (2) meets the education, experience and examination requirements of the board.

B. The board may refuse to grant a certificate on the ground that the applicant failed to satisfy the requirement of good moral character.

C. The education requirement for examination shall be a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with thirty semester hours in accounting or the equivalent as determined by the board. An applicant for a certificate shall have at least one hundred fifty semester hours of college education or its equivalent earned at a college or university acceptable to the board.

D. The examination for certification shall be offered continuously via a computer-based testing system at a designated testing center and shall test an applicant's knowledge of the subjects of accounting and auditing and other related subjects as prescribed by the board. The board shall prescribe the method of applying for the examination and the dissemination of scores, and it shall rely on the American institute of certified public accountants for the grading of the examination. The board may use all or any part of the uniform certified public accountant examination services of the national association of state boards of accountancy to perform administrative services with respect to the examination. The board or its designee shall report all eligibility and score data to the national candidate database, and it shall, to the extent possible, provide that the passing scores are uniform with passing scores of other states.

E. An applicant must pass all sections of the examination to qualify for a certificate. A passing scaled score for each section shall be seventy-five. Sections may be taken individually and in any order. Credit for any section passed shall be valid for eighteen months from the actual date the applicant took that section, without having to attain a minimum score on any failed test section and without regard to whether the applicant has taken other test sections. An applicant must pass all four test sections within a continuous eighteen-month period, which begins on the date that the first section passed is taken. If all four test sections are not passed within the continuous eighteen-month period, credit for any test section passed outside the eighteen-month period will expire, and that test section must be retaken.

F. An applicant shall be given credit for examination sections passed in another state if such credit would have been given in New Mexico.

G. The board may waive or defer requirements of this section regarding the circumstances in which sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet the requirement.

H. An applicant for initial issuance of a certified public accountant certificate shall show that the applicant has had at least one year of experience. This experience shall include providing service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting skills as verified by a certified public accountant who meets requirements prescribed by the board. The experience is acceptable if it was gained through employment in government, industry, academia or public practice.

History: Laws 1999, ch. 179, § 8; 2004, ch. 34, § 2; 2008, ch. 30, § 2; 2020, ch. 27, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

The 2020 amendment, effective May 20, 2020, required the New Mexico public accountancy board to offer examination for certification as a certified public accountant continuously via a computer-based testing system at a designated testing center, and removed certain limitations on testing;

in Subsection C, deleted "After July 1, 2008"; in Subsection D, after "shall be offered", added "continuously", and after "testing system", deleted "at least four times per year at a designated testing center" and added "at a designated testing center"; in Subsection E, after "in any order", deleted "An applicant may not take a failed test section within the same three-month examination window."; and deleted former Subsections F and G, which provided for credit for portions of the certificate examination, and redesignated the succeeding subsections accordingly.

The 2008 amendment, effective May 14, 2008, deleted former Subsection C and added a new Subsection C.

The 2004 amendment, effective March 2, 2004, rewrote Subsections D and E to provide for the examination to be offered four times a year by a computer-based testing system instead of at least twice a year and to change the number time period for passing all four sections of the exam, added new Subsections F, G and H and redesignated former Subsections G and H as Subsections I and J.

61-28B-8.1. Fingerprinting; criminal history background checks. (Repealed effective July 1, 2024.)

A. All applicants for certification as provided for in the 1999 Public Accountancy Act [61-28B-1 NMSA 1978] shall:

(1) be required to provide fingerprints on two fingerprint cards for submission to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check;

(2) pay the cost of obtaining the fingerprints and criminal history background checks; and

(3) have the right to inspect or challenge the validity of the record development by the background check if the applicant is denied certification as established by board rule.

B. Electronic live scans may be used for conducting criminal history background checks.

C. Criminal history records obtained by the board pursuant to the provisions of this section are confidential. The board is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in the 1999 Public Accountancy Act.

D. Criminal history records obtained pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2007, ch. 219, § 5.

Effective dates. — Laws 2007, ch. 219 contains no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-9. Issuance and renewal of certificate; maintenance of competency; nonresident maintenance of competency requirements. (Repealed effective July 1, 2024.)

A. The board shall grant or renew a certificate upon application and demonstration that the applicant's qualifications are in accordance with the 1999 Public Accountancy Act or that they are eligible under the substantial equivalency standard provided in that act.

B. The board may establish by rule for the issuance of annual certificates and may prescribe the expiration date of certificates. Failure to pay the renewal fee shall be cause for the board to withhold renewal of a certificate without prior hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978]. If the renewal fee and delinquency fee are not paid within ninety days after the expiration date of the license, the certificate shall be subject to cancellation. A certificate holder whose certificate has been canceled for failure to pay the annual renewal fee may secure reinstatement of the certificate only upon application and payment of the renewal fee and reinstatement fee and upon approval by the board.

C. The board shall grant or deny an application for certification no later than one hundred twenty days after the complete application is filed.

D. If an applicant appeals the decision of the board to deny a certificate, the board may issue a provisional certificate for no longer than ninety days while the board reconsiders its decision.

E. To renew a certificate, a certificate holder shall provide satisfactory proof to the board of continuing professional education that is designed to maintain competency. Continuing professional education courses shall comply with board rules. The board may create an exception to the requirement to maintain continuing professional education for certificate holders who do not provide services to the public. A certificate holder granted such an exception must place the word "inactive" or "retired" adjacent to the certificate holder's certified public accountant title or registered public accountant title on a business card, letterhead or other document or device, except for a board-issued certificate.

F. A nonresident certificate holder seeking to renew a certificate shall be determined to have met the continuing professional education requirement in this state if the nonresident has met the continuing professional education requirement in the state where the nonresident's principal place of business is located; provided that:

(1) the nonresident signs a statement on the renewal application that the nonresident has met the continuing professional education requirement in the state where the nonresident's principal place of business is located; and

(2) the state where the nonresident's principal place of business is located requires continuing professional education.

G. An applicant for initial issuance or renewal of a certificate pursuant to this section shall list all foreign and domestic jurisdictions in which the applicant has applied for or holds a designation to practice public accountancy. The applicant shall also list any past denial, revocation or suspension of a certificate, license or permit. An applicant or certificate holder shall notify the board in writing, within thirty days of the occurrence of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

History: Laws 1999, ch. 179, § 9; 2005, ch. 84, § 1; 2017, ch. 12, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

The 2017 amendment, effective June 16, 2017, allowed a nonresident accountant to meet continuing education requirements in New Mexico if the nonresident accountant meets the requirements in the state where the nonresident accountant's primary place of business is located; in the cathline, after "competency", added "nonresident maintenance of competency requirements"; in Subsection E, after "adjacent to", deleted "his" and added

"the certificate holder's"; and added a new Subsection F, and redesignated former Subsection F as Subsection G.

The 2005 amendment, effective July 1, 2005, provides that failure to pay a renewal fee is cause for the non-renewal of a certificate without a prior hearing; that a certificate is subject to cancellation if the renewal fee and delinquency fee is not paid within ninety days after expiration of the license and that a certificate that has been cancelled for failure to pay the annual renewal fee may be reinstated only upon application and payment of the renewal fee and a reinstatement fee and upon approval by the board.

61-28B-10. Repealed.

Repeals. — Laws 2008, ch. 30, § 7 repealed 61-28B-10 NMSA 1978, as enacted by Laws 1999, ch. 179, § 10, relating to the use of specialty designations by certificate

holders, effective May 14, 2008. For provisions of former section, see the 2007 NMSA 1978 on *NMOneSource.com*.

61-28B-11. Certificates issued to holders of a certificate, license or permit issued by another state. (Repealed effective July 1, 2024.)

A. The board may issue a certificate to a holder of a certificate, license or permit issued by another state upon a showing that the applicant:

(1) passed the examination required for issuance of the applicant's certificate with grades that would have been passing grades at the time in New Mexico;

(2) passed the examination upon which the applicant's out-of-state certificate was based and has two years of experience acceptable to the board or meets equivalent requirements prescribed by board rule, within the ten years immediately preceding the application; and

(3) if the applicant's certificate, license or permit was issued more than four years prior to application, has fulfilled the board's requirements of continuing professional education.

B. A person licensed by another state who wishes to establish a principal place of business in New Mexico shall apply to the board for a certificate prior to establishing the business. The board may issue a certificate to the person if the person provides proof from a board-approved national qualification appraisal service that the person's certified public accountant qualifications are substantially equivalent to the certified public accountant certification requirements of Paragraph (1) of Subsection A of Section 61-28B-26 NMSA 1978.

C. The board may issue a certificate to a holder of a substantially equivalent foreign designation; provided that:

(1) the foreign authority that granted the designation makes similar provision to allow a person who holds a valid certificate issued by New Mexico to obtain such foreign authority's comparable designation;

(2) the foreign designation:

(a) was duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;

(b) entitles the holder to issue reports upon financial statements; and

(c) was issued upon the basis of educational, examination and experience requirements established by the foreign authority or by law; and

(3) the applicant:

(a) received the designation based on educational and examination standards substantially equivalent to those in effect in New Mexico at the time the foreign designation was granted;

(b) completed an experience requirement in the jurisdiction that granted the foreign designation that is substantially equivalent to the requirement provided for in the 1999 Public Accountancy Act [61-28B-1 NMSA 1978] or has completed four years of professional experience in New Mexico or meets equivalent requirements prescribed by the board within the ten years immediately preceding the application; and

(c) passed a uniform qualifying examination on national standards and an examination on the laws, rules and code of ethical conduct in effect in New Mexico that is acceptable to the board.

D. An applicant for initial issuance or renewal of a certificate pursuant to this section shall list all foreign and domestic jurisdictions in which the applicant has applied for or holds a designation to practice public accountancy. The applicant shall also list any past denial, revocation or suspension of a certificate, license or permit. An applicant or certificate holder shall notify the board in writing, within thirty days of the occurrence of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

E. The board has the sole authority to interpret the application of the provisions of this section.

History: Laws 1999, ch. 179, § 11; 2008, ch. 30, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

The 2008 amendment, effective May 14, 2008, in Subsection A, deleted the condition for the application of

Subsection A that the applicant not qualify for reciprocity pursuant to the substantial equivalency standard and in Subsection B, changed the reference to the 1999 Public Accountancy Act to Subsection A of Section 61-28A-26 NMSA 1978.

61-28B-12. Registered public accountants and firms of registered public accountants. (Repealed effective July 1, 2024.)

A. A person who on July 1, 1999 holds a certificate as a registered public accountant issued pursuant to prior New Mexico law shall be entitled to have his certificate renewed upon fulfillment of the continuing professional education requirements, application and payment of fees prescribed for certificate renewal.

B. A registered public accountant firm holding a permit issued pursuant to prior New Mexico law shall be entitled to have its permit renewed pursuant to the requirements for permit renewal for a certified public accountant firm in the 1999 Public Accountancy Act [61-28B-1 NMSA 1978].

C. As long as a registered public accountant and a registered public accountant firm hold a valid certificate and permit, they shall be entitled to perform attest services to the same extent as a certified public accountant and certified public accountant firm. In addition, they shall be entitled to use the titles "registered public accountant" and "registered public accountants", but no other title.

History: Laws 1999, ch. 179, § 12. **Delayed repeals.** — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-13. Firm permits to practice, attest experience, peer review. (Repealed effective July 1, 2024.)

A. The board may grant or renew a permit to practice as a certified public accountant firm to an applicant that demonstrates its qualifications in accordance with this section.

B. A permit issued pursuant to this section shall be required for the following:

(1) a firm with an office in New Mexico performing attest services as defined by the 1999 Public Accountancy Act;

(2) a firm with an office in New Mexico that uses the title "CPA" or "CPA firm"; or

(3) a firm that does not have an office in New Mexico but offers or renders attest services for a client in New Mexico, except as provided in Subsection C of this section.

C. A firm that does not have an office in New Mexico may offer or render attest services for a client in New Mexico and may use the title "CPA" or "CPA firm" without a permit issued pursuant to this section only if:

(1) the firm offers or renders the services through a person with practice privileges under Section 61-28B-26 NMSA 1978; provided that the firm can lawfully perform the services in the state where the person's primary place of business is located;

(2) the firm meets the requirements of Paragraph (1) of Subsection H of this section; and

(3) the firm meets the requirements of Subsection L of this section.

D. A firm not subject to the requirements of Subsection B or C of this section may perform other nonattest professional services while using the title "CPA" or "CPA firm" in New Mexico without a permit issued pursuant to this section only if:

(1) the firm performs services through a person with practice privileges pursuant to Section 61-28B-26 NMSA 1978; and

(2) the firm can lawfully perform services in the state that is the firm's principal place of business.

E. Permits shall be issued and renewed for periods of not more than two years, expiring on June 30 of the year of expiration. Failure to pay the renewal fee shall be cause for the board to withhold renewal of a permit without prior hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978]. If the renewal fee and delinquency fee are not paid within ninety days after the expiration of the permit, the permit shall be subject to cancellation. A firm whose permit has been canceled for failure to pay the annual renewal fee may secure reinstatement of the permit upon application and payment of the renewal fee and upon approval by the board.

F. The board shall grant or deny an application for a permit no later than ninety days after the complete application is filed.

G. If an applicant appeals the decision of the board to deny a permit, the board may issue a provisional permit for no longer than ninety days while the board reconsiders its decision.

H. An applicant for initial issuance or renewal of a permit shall demonstrate that:

(1) a simple majority of the ownership of the firm, in terms of financial interests, profits, losses, dividends, distributions, options, redemptions and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some

state. A partner, officer, shareholder, member or manager, whose principal place of business is in New Mexico, and who performs professional services in New Mexico, must hold a valid certificate. The firm and all owners must comply with the 1999 Public Accountancy Act. A person with practice privileges pursuant to Section 61-28B-26 NMSA 1978 who performs services for which a permit is required pursuant to this section shall not be required to obtain a certificate from New Mexico pursuant to Section 61-28B-9 NMSA 1978. A firm may include owners who are not certificate holders; provided that:

(a) the firm designates a New Mexico certificate holder, or in the case of a firm that must have a permit, a licensee of another state who meets the requirements of Subsection A of Section 61-28B-26 NMSA 1978, who is responsible for the proper registration of the firm and identifies that person to the board;

(b) all owners who are not certificate holders are active participants in the certified public accountant firm or registered public accountant firm or affiliated entities; and

(c) the firm complies with the 1999 Public Accountancy Act; and

(2) a certificate holder, or a person qualifying for practice privileges pursuant to Section 61-28B-26 NMSA 1978, who is responsible for supervising attest services or signs or authorizes someone to sign the accountant's report on behalf of the firm meets the experience requirements set out in the professional standards for such services.

I. An applicant for initial issuance or renewal of a permit shall be required to register each office of the firm within New Mexico with the board and to show that all attest services rendered in this state are under the charge of a person holding a valid certificate issued pursuant to the 1999 Public Accountancy Act or the corresponding provision of prior law or by some other state.

J. An applicant for initial issuance or renewal of a permit shall list all foreign and domestic jurisdictions in which it has applied for or holds permits as a certified public accountant firm and list any past denial, revocation or suspension of a permit by any jurisdiction. Each permit holder or applicant shall notify the board in writing, within thirty days of the occurrence of a change in the identities of partners, officers, shareholders, members or managers whose principal place of business is in this state, a change in the number or location of offices within this state, a change in the identity of the persons in charge of such offices and any issuance, denial, revocation or suspension of a permit by another jurisdiction.

K. A firm that falls out of compliance with the provisions of the 1999 Public Accountancy Act due to changes in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible. The board may grant a six-month period for a firm to take the corrective action. Failure to bring the firm back into compliance within six months shall result in the suspension or revocation of the firm permit.

L. As a condition to permit renewal, the board shall require the applicant to undergo a peer review conducted in accordance with board rules. The review shall include a verification that a person in the firm, or a person qualifying for practice privileges pursuant to Section 61-28B-26 NMSA 1978, who is responsible for supervising attest services and signs or authorizes someone to sign the accountant's report on behalf of the firm meets the experience requirements set out in the professional standards for the services as required by the board.

M. If a partner, shareholder or member is a legal business entity, that legal business entity must be a firm.

N. Attest services may only be provided by a certificate holder or a member of a firm that satisfies the requirements of this section and Sections 61-28B-8 and 61-28B-13 NMSA 1978. Attest services may not be performed by a certificate holder who is a member of a firm that does not meet the certificate holder's ownership requirements set forth in this section.

History: Laws 1999, ch. 179, § 13; 2000, ch. 42, § 1; 2005, ch. 84, § 2; 2008, ch. 30, § 4; 2017, ch. 12, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

The 2017 amendment, effective June 16, 2017, expanded the type of services a nonresident accountant firm may offer to or render for a client in New Mexico without a permit; in Paragraph B(3), after "New Mexico but", deleted "performs" and added "offers or renders", after "for a

client", deleted "whose principal place of business is", and after "New Mexico", deleted "except as provided in Subsection C of this section"; in Subsection C, in the introductory clause, after "A firm", deleted "without" and added "that does not have", after "New Mexico may", deleted "perform" and added "offer or render attest", after "services", deleted "described in Paragraph (2) of Subsection A of Section 61-28B-3 NMSA 1978", and after "for a client", deleted "whose principal place of business is"; in Paragraph C(1), deleted

"it performs" and added "the firm offers or renders the", and added "provided that the firm can lawfully perform the services in the state where the person's primary place of business is located"; in Paragraph C(2), deleted "a simple majority of the ownership of the firm belongs to holders of a certificate who are licensed in some state pursuant to" and added "the firm meets the requirements of"; in Paragraph C(3), after "the firm", deleted "has undergone a peer review pursuant to" and added "meets the requirements of"; in Subsection D, in the introductory clause, after "may perform other", added "nonattest"; in Paragraph H(2), after "accountant's report", deleted "on the financial statements"; in Subsection L, after "accountant's report", deleted "on the financial statements"; and in Subsection N, after "requirements of this section", added "and Sections 61-28B-8 and 61-28B-13 NMSA 1978".

The 2008 amendment, effective May 14, 2008, in Subsection A, deleted the requirement that a firm hold a permit to provide attest services or use CPA and RPA titles; added Subsections B through D; in Paragraph (1) of

Subsection H, provided that a person with practice privileges pursuant to Section 61-28B-26 NMSA 1978 is not required to obtain a certificate pursuant to Section 61-28B-9 NMSA 1978; included a licensee of another state who meets the requirements of Subsection A of Section 61-28B-26 NMSA 1978 in Subparagraph (a) of Paragraph (1) of Subsection H; and included a person qualifying for practice privileges pursuant to Section 61-28B-26 NMSA 1978 in Paragraph (2) of Subsection H and in Subsection L.

The 2005 amendment, effective July 1, 2005, provides that a certificate is subject to cancellation if the renewal fee and delinquency fee is not paid within ninety days after expiration of the license and that a certificate that has been cancelled for failure to pay the annual renewal fee may be reinstated only upon application, payment of the renewal fee and approval by the board.

The 2000 amendment, effective July 1, 2000, substituted "a simple majority" for "a minimum of sixty percent majority" at the beginning of Subsection E(1).

61-28B-14. Appointment of secretary of state as agent. (Repealed effective July 1, 2024.)

Application for a certificate or permit by a person or firm that is domiciled outside of New Mexico shall constitute appointment of the secretary of state as the applicant's agent, upon whom process may be served in an action or proceeding against the applicant or certificate holder arising out of a transaction or operation connected with or incidental to services performed within New Mexico.

History: Laws 1999, ch. 179, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-15. Enforcement procedures; investigations. (Repealed effective July 1, 2024.)

A. Upon receipt of a complaint or other information suggesting a violation of the 1999 Public Accountancy Act [61-28B-1 NMSA 1978], the board may conduct an investigation to determine whether there is probable cause to institute a proceeding against a person or firm. An investigation is not required when a determination of probable cause can be made without investigation. To aid the investigation, the board or the board's chairman may issue a subpoena to compel a witness to testify or to produce evidence.

B. The board may designate a person to serve as investigating officer to conduct an investigation. The investigating officer shall file a report with the board upon completion of an investigation. The board shall find probable cause or lack of probable cause upon the basis of the report or shall return the report to the investigating officer for further investigation.

C. Upon a finding of probable cause, if the subject of the investigation is a certificate or permit holder, the board shall direct that a notice of contemplated action be issued in accordance with the 1999 Public Accountancy Act. If the subject of the investigation is not a certificate or permit holder, the board shall take appropriate action as provided in that act. Upon a finding of no probable cause, the board shall close the matter.

D. The board may review the publicly available professional work of a certificate or permit holder without any requirement of a formal complaint or suspicion of impropriety on the part of a particular certificate or permit holder. In the event that such review reveals reasonable grounds for a more specific investigation, the board may proceed pursuant to the 1999 Public Accountancy Act.

History: Laws 1999, ch. 179, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-16. Enforcement procedures; hearings by the board. (Repealed effective July 1, 2024.)

A. Hearings by the board shall be conducted in accordance with the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978].

B. In a case when the board renders a decision imposing discipline against a certificate or permit holder pursuant to the 1999 Public Accountancy Act [61-28B-1 NMSA 1978], the board shall examine its records to determine whether the certificate or permit holder holds a certificate or permit in any other state; and, if so, the board shall notify the board of accountancy of the other state of its decision, by mail, within forty-five days of rendering the decision. The board may also furnish information relating to a proceeding resulting in disciplinary action to another public authority and to private professional organizations having a disciplinary interest in the certificate or permit holder. When an appeal pursuant to New Mexico law is in progress, the notification and furnishing of information to a disciplinary authority shall await the resolution of such appeal. If resolution is in favor of the certificate or permit holder, no automatic notification or furnishing of information shall be made.

History: Laws 1999, ch. 179, § 16.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-17. Enforcement; unlawful acts. (Repealed effective July 1, 2024.)

A. Except as otherwise provided in the 1999 Public Accountancy Act [61-28B-1 NMSA 1978], it is unlawful for a person to engage in practice in New Mexico unless the person is a licensee.

B. Except as otherwise provided in the 1999 Public Accountancy Act, no person shall issue a report or financial statement for a person or a governmental unit or issue a report using any form of language conventionally used respecting an audit or review of financial statements, unless the person holds a current license or permit. The state auditor and the state auditor's auditing staff are considered to be in the practice of public accountancy.

C. With the exception of persons cited in Section 61-28B-18 NMSA 1978, a person who prepares a financial accounting and related statements and who is not the holder of a certificate or a permit under the provisions of that act shall use the following statement in the transmittal letter: "I (we) have prepared the accompanying financial statements of (name of entity) as of (time period) and for the (time period) ending (date). This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them."

D. No person shall indicate by title, designation, abbreviation, sign, card or device that the person is a certified public accountant or a registered public accountant unless the person is currently certified by the board pursuant to the 1999 Public Accountancy Act or is a firm currently permitted by the board pursuant to that act. Unless the person is a holder of a current certificate or permit, no person shall use any title, initials or designation intended to or substantially likely to indicate to the public that the person is a certified public accountant or registered public accountant.

E. No person shall engage in practice unless:

- (1) the person holds a valid certificate or current permit; or
- (2) the person is an employee supervised by a licensee pursuant to Section 61-28B-18 NMSA 1978 and not a partner, officer, shareholder or member of a firm.

F. No person or firm holding a certificate or permit shall engage in practice using a professional or firm name or designation that is misleading about the legal form of the firm; provided, however, that names of one or more former partners, shareholders or members may be included in the name of a firm or its successors.

G. No person shall sell, offer to sell or fraudulently obtain or furnish any certificate or permit nor shall the person fraudulently register as a certified public accountant or registered public

accountant or practice in this state without being granted a certificate or permit as provided in the 1999 Public Accountancy Act.

H. A licensee or the licensee's firm shall not receive a commission to recommend or refer a product or service to a client or to recommend to anyone else a product or service to be supplied by a client during the period the licensee or the licensee's firm is engaged to perform the following services for that client and during the period covered by any historical financial statements involved in the services:

- (1) an audit or review of a financial statement;
- (2) a compilation of a financial statement when the licensee expects or might reasonably expect that a third party will use the financial statement, and the compilation report does not disclose the lack of independence by the licensee; or
- (3) an examination of prospective financial information.

I. A licensee or the licensee's firm that is not prohibited from receiving a commission by Subsection H of this section and that is paid or expects to be paid a commission shall disclose that fact in writing to the person for whom the licensee or the licensee's firm performs a service or refers or recommends a product or service. A licensee or firm that accepts or pays a referral fee for a service or to obtain a client shall disclose such acceptance or payment to the client in writing.

J. A licensee or the licensee's firm shall not charge or receive a contingent fee for a client for whom the licensee or the licensee's firm performs the following services:

- (1) an audit or review of a financial statement;
- (2) a compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the compilation report does not disclose a lack of independence;
- (3) an examination of prospective financial information; or
- (4) preparation of an original or amended tax return or claim for tax refund, except in the case of federal, state or other taxes in which the findings are those of the tax authorities and not those of the licensee or in the case of professional services for which fees are to be fixed by courts or other public authorities and that are therefore indeterminate in amount at the time the professional services are undertaken.

K. No licensee shall sign or certify any financial statements if the licensee knows the same to be materially false or fraudulent.

L. For the purposes of this section, a person with practice privileges pursuant to Section 61-28B-26 NMSA 1978 shall be substantially equivalent to a certificate holder pursuant to Section 61-28B-9 NMSA 1978. Terms or references that refer to a certificate holder pursuant to Section 61-28B-9 NMSA 1978 shall include a person with practice privileges pursuant to Section 61-28B-26 NMSA 1978.

M. For the purposes of this section, a firm practicing under Subsection C or D of Section 61-28B-13 NMSA 1978 may perform the services specified by the applicable provisions of the 1999 Public Accountancy Act and may use the terms "CPA" or "CPA firm" without obtaining a permit. Terms or references that refer to a firm holding a permit pursuant to Subsection B of Section 61-28B-13 NMSA 1978 shall include a firm practicing pursuant to Subsection C or D of Section 61-28B-13 NMSA 1978.

History: Laws 1999, ch. 179, § 17; 2000, ch. 91, § 2; 2001, ch. 97, § 1; 2008, ch. 30, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

The 2008 amendment, effective May 14, 2008, in Subsections A and B, changed the reference to "Subsection C of this section and Section 61-28B-18 NMSA 1978" to the 1999 Public Accountancy Act; in Paragraph (2) of Subsection E, required employees to be supervised by a licensee pursuant to Section 61-28B-18 NMSA 1978; and added Subsections L and M.

The 2001 amendment, effective April 2, 2001, added the exception in Paragraph J(4).

The 2000 amendment, effective July 1, 2000, updated the internal references in Subsections A, B and C, rewrote

Subsections H and I, added new Subsection J, and redesignated former Subsection J as present Subsection K.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 2 et seq.

Failure of accountant to procure license as affecting validity or enforceability of contract, 118 A.L.R. 651.

Construction and application of statutory provisions respecting persons who may prepare tax returns for others, 10 A.L.R.2d 1443.

1 C.J.S. Accountants § 5.

61-28B-18. Exemptions; unlawful acts. (Repealed effective July 1, 2024.)

A. Subsection B of Section 17 [61-28B-17 NMSA 1978] of the 1999 Public Accountancy Act does not prohibit:

- (1) an officer, partner, shareholder, member or employee of a firm from affixing his own signature to a statement or report in reference to the financial affairs of his firm with any wording designating the position, title or office that he holds within the firm;
- (2) any act of a public official or employee in the performance of his duties; or
- (3) the performance by any persons of other services, including management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters and the preparation of financial statements without the issuance of reports on them.

B. Nothing contained in the 1999 Public Accountancy Act [61-28B-1 NMSA 1978] shall prevent a person from serving as an employee of or as an assistant to a certified public accountant, a registered public accountant or a firm; provided that the employee or assistant shall work under the control and supervision of a certified public accountant or registered public accountant who holds a certificate issued pursuant to that act.

History: Laws 1999, ch. 179, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-19. Business names; prohibitions. (Repealed effective July 1, 2024.)

A. No person engaged in practice shall use in a business name the words "company" or "and company" or a similar designation or any abbreviations thereof unless the person is a firm pursuant to the 1999 Public Accountancy Act [61-28B-1 NMSA 1978] and has more than one partner, shareholder or member and the business name contains the name of at least one current or former partner, shareholder or member. A business name may contain only the name or initials of a present or former partner, shareholder or member and the words "and company" or "company" or a similar designation or any abbreviation thereof.

B. Nothing contained in this section shall apply to, affect or limit the right of the remaining partner, shareholder or member or added partners, shareholders or members in the continuous use of a business name adopted before the enactment of the 1999 Public Accountancy Act, even though the person whose name is included in the business name is no longer a partner, shareholder or member.

History: Laws 1999, ch. 179, § 19.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

Validity, construction and application of statute or regulation restricting use of terms such as "accountant," "public accountant" or "certified public accountant," 4 A.L.R.4th 1201.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 10.

61-28B-20. Enforcement; administrative violations and remedies. (Repealed effective July 1, 2024.)

A. The board may take, after providing a person due process pursuant to the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], corrective action identified in Subsection B of this section following a finding that an applicant or licensee:

- (1) committed fraud or deceit in obtaining a certificate or permit;
- (2) lost a certificate or permit through cancellation, revocation, suspension or refusal of renewal in any other state for cause, as defined by board rule;
- (3) failed to maintain compliance with the requirements of the 1999 Public Accountancy Act and board rules for issuance or renewal of a certificate or permit or failed to report material changes to the board, as required by board rule;
- (4) lost the authorization to practice in any state or before any federal agency through revocation or suspension of that authorization;

(5) committed dishonest, fraudulent or grossly negligent acts in the practice of public accountancy or in the filing or failure to file the applicant's or licensee's own income or other federal, state or local tax returns;

(6) violated a provision of the 1999 Public Accountancy Act or a rule promulgated by the board pursuant to that act;

(7) violated a rule of professional conduct promulgated by the board pursuant to the 1999 Public Accountancy Act;

(8) has been convicted of a felony or of a crime an element of which is dishonesty or fraud under the laws of the United States, of New Mexico or of any other state, or of any other jurisdiction, if the acts involved would have constituted a crime under the laws of New Mexico;

(9) performed a fraudulent act while holding a certificate or permit issued pursuant to the 1999 Public Accountancy Act or prior law; or

(10) participated in any conduct reflecting adversely upon the applicant's or licensee's fitness to engage in practice.

B. After a finding by the board that an applicant or licensee has committed a violation identified in Subsection A of this section, the board may take, with or without terms, conditions and limitations, one or more of the following corrective actions:

(1) deny an application or revoke a certificate or permit issued pursuant to the 1999 Public Accountancy Act or corresponding provisions of prior law;

(2) suspend a certificate or permit for a period of not more than five years;

(3) reprimand, censure or limit the scope of practice of a licensee;

(4) impose an administrative fine not exceeding ten thousand dollars (\$10,000); or

(5) place the licensee on probation.

C. In lieu of or in addition to a remedy specifically provided in Subsection B of this section, the board may require of a licensee:

(1) a quality review conducted in such a fashion as the board may specify;

(2) satisfactory completion of such continuing professional education programs as the

board may specify;

(3) correction of the violation identified; and

(4) any other suitable remedial action as determined by the board.

D. In a proceeding in which a remedy provided by Subsection B or C of this section is imposed, the board may also require the respondent to pay the costs of the proceeding.

E. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty in an amount not to exceed two thousand dollars (\$2,000) against a person who engages in public accountancy without a license. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing.

History: Laws 1999, ch. 179, § 20; 2007, ch. 219, § 3; 2017, ch. 52, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided that the New Mexico public accountancy board may impose a civil penalty not to exceed two thousand dollars (\$2,000) and assess certain costs against any person who engages in public accountancy without a license; and added Subsection E.

The 2007 amendment, effective June 15, 2007, increases the maximum administrative fine in Paragraph (4) of Subsection (B) from \$1,000 to \$10,000.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 6.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Regulation of public accountants, 4 A.L.R.4th 1201.

Liability of independent accountant to investors or shareholders, 35 A.L.R.4th 225.

Liability of independent accountant to investors or shareholders, 48 A.L.R.5th 389.

1 C.J.S. Accountants §§ 6 to 9.

61-28B-21. Reinstatement. (Repealed effective July 1, 2024.)

A. In any case in which the board has suspended or revoked a certificate or permit or refused to renew the same, the board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension or reissue the certificate or permit.

B. The board shall specify by rule the manner in which such applications shall be made, the times within which they shall be made and the circumstances in which hearings shall be held thereon.

C. Before reissuing or terminating the suspension of a certificate or permit pursuant to this section and as a condition thereto, the board may require the applicant to show successful completion of specified continuing professional education or may require a quality review or both.

History: Laws 1999, ch. 179, § 21.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-22. Criminal penalties. (Repealed effective July 1, 2024.)

A. When the board has reason to believe that a person or firm has knowingly engaged in an act or practice that violates the provisions of the 1999 Public Accountancy Act [61-28B-1 NMSA 1978], the board may bring its information to the attention of the district attorney or other appropriate law enforcement officer of any jurisdiction who may bring a criminal proceeding.

B. A person or firm that knowingly violates a provision of the 1999 Public Accountancy Act is guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand dollars (\$1,000) or by a definite term of imprisonment not to exceed six months or both.

History: Laws 1999, ch. 179, § 22.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-23. Single act evidence of practice. (Repealed effective July 1, 2024.)

In an action brought pursuant to the provisions of the 1999 Public Accountancy Act [61-28B-1 NMSA 1978], evidence of the commission of a single act prohibited by that act shall be sufficient to justify a penalty, injunction, restraining order or conviction, respectively, without evidence of a general course of conduct.

History: Laws 1999, ch. 179, § 23.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-24. Confidential communications. (Repealed effective July 1, 2024.)

Except by permission of the client for whom a certificate or permit holder performs a service or the heir, successor or personal representative of the client, a certificate holder shall not voluntarily disclose information communicated to him by the client relating to and in connection with a service rendered to the client by him. Such information shall be deemed confidential; provided that nothing in this section shall prohibit the disclosure of information required to be disclosed by a standard of the public accounting profession in reporting on the examination of a financial statement or prohibit disclosure in a court proceeding, in an investigation or proceeding pursuant to the 1999 Public Accountancy Act [61-28B-1 NMSA 1978], in an ethical investigation conducted by a private professional organization or in the course of a peer review, or to another person active in the organization performing a service for that client on a need-to-know basis or to a person in the entity who needs this information for the sole purpose of assuring quality control.

History: Laws 1999, ch. 179, § 24.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-25. Working papers; client records. (Repealed effective July 1, 2024.)

A. A statement, record, schedule, working paper or memorandum made by a certificate or permit holder incident to rendering a service to a client shall be the property of the certificate or

permit holder in the absence of an express agreement between him and the client to the contrary, except the report submitted by him to the client and except for a record that is part of the client's records. No such item shall be sold, transferred or bequeathed without the consent of the client or the client's personal representative, except to a partner, stockholder or member of the firm or any combined or merged firm or successor in interest to the certificate or permit holder. Nothing in this section shall prohibit any temporary transfer of a work paper or other material necessary in the course of carrying out a peer review or as otherwise interfering with the disclosure of information pursuant to the 1999 Public Accountancy Act [61-28B-1 NMSA 1978].

B. A certificate or permit holder shall furnish to a client or former client, upon request and reasonable notice:

(1) a copy of his working paper, to the extent that such working paper includes a record that would ordinarily constitute part of the client's record and is not otherwise available to the client; and

(2) an accounting or other record belonging to, or obtained from or on behalf of, the client that he removed from the client's premises or received for the client's account; he may make and retain a copy of a document of the client when they form the basis for work done by him.

History: Laws 1999, ch. 179, § 25.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-26. Practice privilege and discipline for a certificate holder from a state whose accountancy statute is substantially equivalent. (Repealed effective July 1, 2024.)

A. Except as provided in Subsection D of this section, a person whose principal place of business is not in New Mexico shall be presumed to have qualifications substantially similar to New Mexico's requirements and may exercise all the practice privileges of certificate holders of New Mexico without the need to obtain a certificate pursuant to Section 61-28B-9 NMSA 1978 if the person:

(1) holds a valid license as a certified public accountant from any state that requires, as a condition of licensure, that a person:

(a) have at least one hundred fifty semester hours of college education, including a baccalaureate or higher degree conferred by a college or university acceptable to the board;

(b) achieve a passing grade on the uniform certified public accountant examination; and

(c) possess at least one year of experience, including providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, which may be obtained through government, industry, academic or public practice, all of which can be verified by a licensee; or

(2) holds a valid license as a certified public accountant from any state that does not meet the requirements of Paragraph (1) of Subsection A of this section, but the person's certified public accountant qualifications are substantially equivalent to those requirements. A person who passed the uniform certified public accountant examination and holds a valid license issued by any other state prior to January 1, 2012 may be exempt from the education requirement in Subparagraph (a) of Paragraph (1) of this subsection.

B. Notwithstanding any other provision of law, a person who qualifies for the practice privilege pursuant to this section may offer or render professional services whether in person or by mail, telephone or electronic means, and no notice, fee or other submission shall be required of the person.

C. A person licensed in another state exercising the practice privilege afforded pursuant to this section shall consent, as a condition of exercising the practice privilege:

(1) to submit to the personal and subject-matter jurisdiction and disciplinary authority of the board;

(2) to comply with the 1999 Public Accountancy Act and the rules adopted by the board;

(3) to cease offering or rendering professional attest services in New Mexico in the event the license from the state of the person's principal place of business is no longer valid; and

(4) to the appointment of the state board that issued the license as agent upon whom process may be served in any action or proceeding by the New Mexico public accountancy board against the licensee.

D. A person who qualifies for the practice privileges pursuant to this section and who performs an attest service shall meet the requirements of Section 61-28B-11 NMSA 1978.

E. A certificate or permit holder of New Mexico that offers or renders an attest service or uses its certified public accountant title in another state shall be subject to disciplinary action in New Mexico for an act committed in another state for which it would be subject to discipline in the other state. The board shall investigate any complaint made by the board of accountancy in another state in accordance with the provisions of the 1999 Public Accountancy Act.

History: Laws 1999, ch. 179, § 26; 2008, ch. 30, § 6; 2017, ch. 12, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

The 2017 amendment, effective June 16, 2017, required certain nonresident accountants who receive New Mexico practice privileges to meet the requirements of Section 61-28B-11 NMSA 1978; in Subsection A, added "Except as provided in Subsection D of this section"; in Subsection C, in the introductory clause, after "pursuant to this section", deleted "and the firm that employs the

licensee simultaneously"; added a new Subsection D and redesignated former Subsection D as Subsection E; in Subsection E, after the first sentence, deleted "Notwithstanding the provisions of Sections 61-28B-15 and 61-28B-16 NMSA 1978", and after "board of accountancy in another state", added "in accordance with the provisions of the 1999 Public Accountancy Act".

The 2008 amendment, effective May 14, 2008, deleted former Subsections A through C and added new Subsections A through D.

61-28B-27. Fees. (Repealed effective July 1, 2024.)

Except as provided in Section 61-1-34 NMSA 1978, the board may collect from certificate holders, permit holders, applicants and others the following fees:

- A. for examination, a fee not to exceed four hundred dollars (\$400) per examination section;
- B. for certificate issuance or renewal, a fee not to exceed one hundred seventy-five dollars (\$175) per year; provided, however, that the board may charge a biennial fee of not more than twice the annual fee;
- C. for firm permits, a fee not to exceed one hundred dollars (\$100) per year; provided, however, that the board may charge a biennial fee of not more than twice the annual fee;
- D. for incomplete or delinquent continuing education reports, certificate or permit renewals, a fee not to exceed one hundred dollars (\$100) each;
- E. for preparing and providing licensure and examination information to others, a fee not to exceed seventy-five dollars (\$75.00) per report;
- F. reasonable administrative fees for such services as research, record copies, duplicate or replacement certificates or permits;
- G. a fee for fingerprinting and background check for an applicant for certification not to exceed one hundred dollars (\$100);
- H. for certificate reinstatement, a fee not to exceed one hundred seventy-five dollars (\$175), plus past due fees and penalties;
- I. for waiver to comply with continuing professional education requirements, a fee not to exceed seventy-five dollars (\$75.00) per application; and
- J. for reentry into active certificate status and to comply with continuing education, a fee not to exceed seventy-five dollars (\$75.00) per application.

History: Laws 1999, ch. 179, § 27; 2002, ch. 85, § 1; 2004, ch. 34, § 3; 2007, ch. 219, § 4 2021, ch. 92, § 15.

The 2021 amendment, effective June 18, 2021, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2007 amendment, effective June 15, 2007, adds Subsection G.

The 2004 amendment, effective March 2, 2004, amended Subsection A to increase the examination fee

from two hundred twenty-five dollars (\$225) to four hundred dollars (\$400).

The 2002 amendment, effective July 1, 2002, substituted "two hundred twenty-five dollars (\$225) per examination section" for "one hundred seventy-five dollars (\$175) per examination application".

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-28. Criminal offender eligibility. (Repealed effective July 1, 2024.)

Except as otherwise provided in the 1999 Public Accountancy Act [61-28B-1 NMSA 1978], the provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration or criminal records required or permitted by the 1999 Public Accountancy Act.

History: Laws 1999, ch. 179, § 28.

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-29. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The New Mexico public accountancy board is terminated on July 1, 2023 pursuant to the provisions of the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the 1999 Public Accountancy Act until July 1, 2024. Effective July 1, 2024, the 1999 Public Accountancy Act is repealed.

History: Laws 1999, ch. 179, § 29; 2005, ch. 208, § 20; 2011, ch. 30, § 7; 2017, ch. 52, § 13.

The 2017 amendment, effective June 16, 2017, changed "July 1, 2018" to "July 1, 2024", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

ARTICLE 29

Real Estate Brokers and Salesmen

Sec.

61-29-1. Prohibition.

61-29-1.1. Recompiled.

61-29-2. Definitions and exceptions.

61-29-3. Criminal offender's character evaluation.

61-29-4. Creation of commission; powers and duties.

61-29-4.1. Additional powers of commission; continuing education programs; minimum requirements.

61-29-4.2. Additional powers of the commission; professional liability insurance; minimum coverage.

61-29-4.3. Regulation and licensing department; administratively attached.

61-29-4.4. Additional powers of commission; fingerprinting and criminal history background checks.

61-29-5. Organization of commission.

61-29-5.1. Recompiled.

61-29-6. Meeting of the commission.

61-29-7. Reimbursement and expenses.

61-29-8. License fees; disposition.

61-29-9. Qualifications for license.

61-29-10. Application for license and examination.

61-29-10.1. Brokerage relationships; creation.

61-29-10.2. Licensee's duties; disclosure.

61-29-10.3. Repealed.

61-29-11. Issuance, renewal and surrender of licenses.

61-29-12. Refusal, suspension or revocation of license for causes enumerated.

Sec.

61-29-13. Provision for hearing before suspension or revocation of license.

61-29-14. Repealed.

61-29-15. Maintenance of list of licensees.

61-29-16. Suit by qualifying or associate broker.

61-29-16.1. Foreign brokers; consent to service; referral fees.

61-29-16.2. Nonresident licensees; consent to service.

61-29-17. Penalty; injunctive relief.

61-29-17.1. Recompiled.

61-29-17.2. Unlicensed activity; civil penalty; administrative costs.

61-29-18. Interpretation of act.

61-29-19. Repealed.

61-29-19.1. Real estate education and training fund created; purpose; appropriation.

61-29-20. Short title.

61-29-21. Fund created.

61-29-22. Additional fees.

61-29-23. Judgment against qualifying or associate broker; petition; requirements; recovery limitations.

61-29-24. Commission; compromise.

61-29-25. Commission finding.

61-29-26. Insufficient funds.

61-29-27. Subrogation.

61-29-28. Waiver.

61-29-29. Disciplinary action not limited.

61-29-1. Prohibition.

It is unlawful for a person to engage in the business or act in the capacity of real estate associate broker or qualifying broker within New Mexico without a license issued by the commission.

A person who engages in the business or acts in the capacity of an associate broker or a qualifying broker in New Mexico, except as otherwise provided in Section 61-29-2 NMSA 1978, with or without a New Mexico real estate broker's license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978.

History: 1953 Comp., § 67-24-19, enacted by Laws 1959, ch. 226, § 1; 1965, ch. 304, § 1; 2001, ch. 163, § 1; 2005, ch. 35, § 1; 2013, ch. 167, § 1.

The 2013 amendment, effective June 14, 2013, clarified the prohibited activities; in the first sentence, after "engage in the business", added "or", and after "act in the capacity of", deleted "advertise or display in any manner or otherwise assume to engage in the business of, or act as an", added "real estate" and in the second sentence, after "with or without a New Mexico" added "real estate broker's".

The 2005 amendment, effective January 1, 2006, prohibits a person from engaging in business or acting as an associate broker or a qualifying broker without a license.

The 2001 amendment, effective July 1, 2001, substituted "a person to engage" for "any person, business association or corporation to engage"; deleted "real estate" preceding "broker"; deleted "New Mexico real estate" preceding "commission"; and added the last sentence of the subsection.

ANNOTATIONS

Brokerage can encompass sale of interest in real estate contract. — Commission had jurisdiction over real estate broker's sale of an interest in a real estate contract since broker was a real estate broker as defined in Section 61-29-2A(4) NMSA 1978 and represented himself as such and acted in that capacity. *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Payment of a finder's fee to an unlicensed real estate broker prohibited. — Where a Chapter 7 trustee filed a motion to sell debtors' house, and where the terms of the proposed sale included a proposed finder's fee for creditor, an unlicensed real estate broker who introduced the buyers of the house to the trustee, the proposed finder's fee was prohibited by this section, because the creditor, as an unlicensed broker in New Mexico, may not collect a finder's fee or any other compensation from the sale of real estate. *In re Waggoner*, 605 B.R. 222 (Bankr. D. N.M. 2019).

Generally, as to advertisements violating section. — It is a violation of this section for a person, business firm

or corporation to advertise the disposition of real estate using the terms "Real Estate Agency," "Realty," "Agency" or "Broker" without first being licensed as a real estate broker as is defined in Section 61-29-2 NMSA 1978. It is not really important whether or not the person, business firm or corporation doing the advertising uses the terms "Real Estate Agency," "Realty," "Agency" or "Broker." The real question is: have they advertised themselves as offering a service which comes within the definition of a real estate broker and a real estate salesman? 1966 Op. Att'y Gen. No. 66-16.

Law reviews. — For note, "Vendor and Purchaser - Increased Risks of Forfeiture and Malpractice Resulting from the Use of Real Estate Contracts: Albuquerque National Bank v. Albuquerque Ranch Estates, Inc.," see 15 N.M.L. Rev. 99 (1985).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 6 to 12.

Validity of statute or ordinance requiring real estate brokers to procure license, 39 A.L.R.2d 606.

Application of state antitrust laws to activities or practices of real estate agents or associations, 22 A.L.R.4th 103.

Attorney's right to act as real estate broker without having been licensed as such, 23 A.L.R.4th 230.

Right to private action under state statutes or regulations governing real estate brokers or salesmen, 28 A.L.R.4th 199.

Real estate brokers: statute or regulation forbidding use of prizes, gifts, or premiums as inducement to secure customers, 62 A.L.R.4th 1044.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property, 71 A.L.R.4th 511.

Liability of vendor or real-estate broker for failure to disclose information concerning off-site conditions affecting value of property, 41 A.L.R.5th 157.

12 C.J.S. Brokers §§ 14, 18.

61-29-1.1. Recompiled.

Recompilations. — Former 61-29-1.1 NMSA 1978, relating to registration of time share projects and licensing

of salespersons, enacted by Laws 1986, ch. 97, § 2, has been recompiled as 47-11-2.1 NMSA 1978.

61-29-2. Definitions and exceptions.

A. As used in Chapter 61, Article 29 NMSA 1978:

(1) "agency relationship" means the fiduciary relationship created solely by an express written agency agreement between a person and a brokerage, authorizing the brokerage to act as an agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission;

(2) "agent" means the brokerage authorized, solely by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, "agent" means the person who has been authorized to act by that associate broker's qualifying broker;

(3) "associate broker" means a person who, for compensation or other valuable consideration, is associated with or engaged under contract by a qualifying broker to carry on the qualifying broker's business as a whole or partial vocation, and:

(a) lists, sells or offers to sell real estate; buys or offers to buy real estate; or negotiates the purchase, sale or exchange of real estate or options on real estate;

(b) is engaged in managing property for others;

(c) leases, rents or auctions or offers to lease, rent or auction real estate;

(d) advertises or makes any representation as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on real estate for others as a whole or partial vocation; or

(e) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which the qualifying broker undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for that purpose or for the purpose of referral of information concerning real estate to other qualifying brokers or associate brokers;

(4) "auctioneer" means a person who auctions or offers to auction real property;

(5) "brokerage" means a licensed qualifying broker and the licensed real estate business represented by the qualifying broker and its affiliated licensees;

(6) "brokerage relationship" means the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission;

(7) "client" means a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission;

(8) "commercial real estate" means real estate that is zoned:

(a) for business or commercial use by a city or county; or

(b) by a city or county to allow five or more multifamily units; provided that all units are located on a single parcel of land with a single legal description;

(9) "commission" means the New Mexico real estate commission;

(10) "customer" means a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission;

(11) "foreign broker" means a real estate broker who does not hold a real estate license issued by the commission, but who holds a current and valid real estate broker's license issued by another state in the United States, a province of Canada or any other sovereign nation;

(12) "license" means a qualifying broker's license or an associate broker's license issued by the commission;

(13) "licensee" means a person holding a valid qualifying broker's license or an associate broker's license subject to the jurisdiction of the commission;

(14) "nonresident licensee" means an associate or qualifying broker holding a real estate license issued by the commission and whose license application address is not within the state of New Mexico;

(15) "property management" means real estate services as specified by a management agreement that include marketing, showing, renting and leasing of real property; collection and disbursement of funds on behalf of the owner; supervision of employees and vendors; coordination of maintenance and repairs; management of tenant relations; and preparation of leases or rental agreements, financial reports and other documents. "Property management" does not mean inspections of property, repairs and maintenance incidental to the sale and marketing of property as authorized by the owner or the management of a condominium or homeowner association or advertising or taking reservations for vacation rental properties;

(16) "qualifying broker" means a licensed real estate broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, who discharges the responsibilities specific to a qualifying broker as defined by the commission and who for compensation or other consideration from another:

(a) lists, sells or offers to sell real estate; buys or offers to buy real estate; or negotiates the purchase, sale or exchange of real estate or options on real estate;

(b) is engaged in managing property for others;

(c) leases, rents or auctions or offers to lease, rent or auction real estate;

(d) advertises or makes any representation as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on real estate for others as a whole or partial vocation; or

(e) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which the qualifying broker undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for that purpose or for the purpose of referral of information concerning real estate to other qualifying brokers or associate brokers;

(17) "real estate" means land, improvements, leaseholds and other interests in real property that are less than a fee simple ownership interest, whether tangible or intangible; and

(18) "transaction broker" means a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.

B. A single act of a person in performing or attempting to perform an activity described in Paragraph (16) of Subsection A of this section makes the person a qualifying broker. A single act of a person in performing or attempting to perform an activity described in Paragraph (3) of Subsection A of this section makes the person an associate broker.

C. The provisions of Chapter 61, Article 29 NMSA 1978 do not apply to:

(1) a person who as owner performs any of the activities included in this section with reference to property owned by the person, except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels;

(2) the employees of the owner or the employees of a qualifying broker acting on behalf of the owner, with respect to the property owned, if the acts are performed in the regular course of or incident to the management of the property and the investments;

(3) isolated or sporadic transactions not exceeding two transactions annually in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner authorizing the person to finally consummate and to perform under any contract the sale, leasing or exchange of real estate on behalf of the owner; and the owner or attorney-in-fact has not used a power of attorney for the purpose of evading the provisions of Chapter 61, Article 29 NMSA 1978;

(4) transactions in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner related to the attorney-in-fact within the fourth degree of consanguinity or closer, authorizing the person to finally consummate and to perform under any contract for the sale, leasing or exchange of real estate on behalf of the owner;

(5) the services rendered by an attorney at law in the performance of the attorney's duties as an attorney at law;

(6) a person acting in the capacity of a receiver, trustee in bankruptcy, administrator or executor, a person selling real estate pursuant to an order of any court or a trustee acting under a trust agreement, deed of trust or will or the regular salaried employee of a trustee;

(7) the activities of a salaried employee of a governmental agency acting within the scope of employment;

(8) persons who deal exclusively in mineral leases or the sale or purchase of mineral rights or royalties in any case in which the fee to the land or the surface rights are in no way involved in the transaction; or

(9) an auctioneer; provided that payments to an auctioneer for services rendered in connection with an auction shall be made to the auctioneer by a qualifying broker, and prior to performing an auction of real estate, the auctioneer shall enter into a transaction-specific written agreement with a qualifying broker that includes:

(a) a description of the parties, the real estate and any additional information necessary to identify the specific transaction governed by the agreement;

(b) the terms of compensation between the auctioneer and the qualifying broker;

(c) the effective date and definitive termination date of the agreement; and

(d) a statement that the auctioneer agrees to: 1) cooperate fully with the qualifying broker and all associate brokers designated by the qualifying broker; 2) conduct all contact with parties, including the general public and other brokers, in association with the qualifying broker or associate brokers designated by the qualifying broker; and 3) conduct all marketing and solicitations for business in the name of the qualifying broker.

History: 1978 Comp., § 61-29-2, enacted by Laws 1999, ch. 127, § 1; 2003, ch. 36, § 1; 2005, ch. 35, § 2; 2011, ch. 85, § 1; 2013, ch. 167, § 2; 2014, ch. 27, § 1; 2019, ch. 90, § 1; 2021, ch. 106, § 1.

The 2021 amendment, effective July 1, 2021, defined "property management" as used in Chapter 61, Article 29 NMSA 1978; and in Subsection A, added new Paragraph A(15) and redesignated the succeeding paragraphs accordingly.

The 2019 amendment, effective June 14, 2019, defined "auctioneer" as used in Chapter 61, Article 29 NMSA 1978, and exempted an auctioneer working under the control of a qualifying broker from the licensure requirements, and provided requirements for the agreement between the auctioneer and the qualifying broker; in Subsection A, added new Paragraph A(4) and redesignated former Paragraphs A(4) through A(16) as Paragraphs A(5) through A(17), respectively; in Subsection B, after the first occurrence of "Paragraph", deleted "(14)" and added "(15)"; and in Subsection C, added new Paragraph C(9).

The 2014 amendment, effective May 21, 2014, added definitions of "commercial real estate", "foreign broker", and "nonresident licensee" to provide for foreign brokers acting as qualifying or associate brokers with respect to commercial real estate; and in Subsection A, added Paragraphs (7), (10) and (13).

The 2013 amendment, effective June 14, 2013, changed the definition of "associate broker" and added the definition of "qualifying broker"; in Paragraph (3) of Subsection A, in the introductory sentence, after "qualifying broker", deleted "to participate in an activity described in Paragraph (4) of this subsection or"; added Subparagraphs (a) through (e) of Paragraph (3) of Subsection A; deleted former Paragraph (4) of Subsection A, which defined "broker" and "qualifying broker"; in Paragraph (6) of Subsection A, after "means a", deleted "buyer, seller, landlord or tenant" and added "person"; in Paragraph (8) of Subsection A, after "means a", deleted "buyer, seller, landlord or tenant" and added "person"; added Paragraph (11) of Subsection A; deleted former Paragraph (13) of Subsection A, which defined "real estate salesperson"; and in Paragraph (2) of Subsection C, after "property and the investments", deleted "except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels".

The 2011 amendment, effective July 1, 2011, in Subsection A, included property managers in the definition of "broker"; and in Subsection C, provided that Chapter 61, Article 29 NMSA 1978 applies when a sale constitutes a subdivision of property containing one hundred or more parcels.

The 2005 amendment, effective January 1, 2006, redefines "agency relationship" to mean the fiduciary relationship created solely by a written agreement between a person and a brokerage; defines "agent" to mean the brokerage authorized solely by a written agreement; defines "associate broker" to mean a person who is associated with or engaged under contract by a qualifying broker; defines "brokerage relationship" as the legal or contractual relationship between a person and a brokerage in a real estate transaction; redefines "licensee" to mean a person holding a qualifying broker's or associate broker's license; and defines "transaction broker" to mean a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.

The 2003 amendment, effective January 1, 2004, substituted "contractual" for "contractural" following "means the legal or" near the middle of Paragraph A(1); deleted "created pursuant to Section 61-29-4 NMSA 1978" at the end of Paragraph A(5); inserted "or a real estate salesperson's license" following "real estate broker's license" in the middle of Paragraph A(7); substituted "a person" for "anyone" following "licensee means" near the beginning of Paragraph A(8); deleted Paragraph A(9) and redesignated the

subsequent paragraphs accordingly; and substituted "(10)" for "(11)" following "Paragraph" near the end of Subsection B.

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Texas broker was acting as a broker in New Mexico. — Where plaintiff, who was a licensed real estate broker in Texas, agreed to buy a ranch in New Mexico and the owners agreed to pay plaintiff a six percent commission; defendants, who were licensed brokers in New Mexico, assisted plaintiff conduct due diligence in connection with the purchase of the ranch; plaintiff and defendants subsequently agreed that if defendants found a third-party purchaser of the ranch, that plaintiff would not buy the ranch and plaintiff and defendants would share the sales commission; defendants told plaintiff about a possible buyer of the ranch and plaintiff directed defendants to contact the owner of the ranch about the prospective buyer; the ranch was not listed for sale; and the only way defendants knew the ranch was for sale was through their contact with plaintiff, plaintiff was a broker within the meaning of Section 61-29-2 NMSA 1978 because plaintiff was a finder or middleman who brought the ranch owner and the buyer together with the assistance of defendants. *PC Carter Co. v. Miller*, 2011-NMCA-052, 149 N.M. 660, 253 P.3d 950.

Broker buying or selling property for himself. — The commission lacks jurisdiction over a real estate broker who is buying or selling property for himself, unless he holds himself out as a broker. *Vihstadt v. Real Estate Comm'n*, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Burden on broker when acting for himself. — A licensed broker has the burden of showing that there is no possibility of misunderstanding or confusion as to his status when he purports to act for himself. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Hiring of note broker for sale of real estate contract. — Because the seller of a real estate contract, who hired a note broker to handle the sale, was not acting as a real estate broker during the sale, the commission lacked jurisdiction to revoke the seller's license for misrepresentation. *Vihstadt v. Real Estate Comm'n*, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Whether landowner made representation as to being real estate broker is factual determination to be made by the trier of fact. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Fiduciary duties of salesperson extended to broker. — Because a real estate salesperson must work under a broker, when a principal buyer or seller engages a real estate salesperson as an agent, the principal also engages the salesperson's qualifying broker as an agent, thus extending the fiduciary duty owed to the principal buyer or seller up the salesperson's chain of command to the broker. Although agency fiduciary obligations and liabilities may extend from a salesperson to the qualifying broker, the fiduciary duties of one real estate salesperson are not attributable to another salesperson operating under the same qualifying broker unless one salesperson is at fault in appointing, supervising or cooperating with the other. *Moser v. Bertram*, 1993-NMSC-040, 115 N.M. 766, 858 P.2d 854.

Broker status not changed by power of attorney. — Where a real estate broker entered into a real estate transaction as a broker, he was not exempt from the jurisdiction of the commission under the "attorney in fact" exception in Subsection D (now C(4)), even though he was given the power of attorney to enable him to complete the transaction without the owners being present. *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Activities not excepted. — Activities did not fall within exception provided for in Subsection D (now

C). *Bosque Farms Home Ctr., Inc. v. Tabet Lumber Co.*, 1988-NMSC-027, 107 N.M. 115, 753 P.2d 894.

No license required for arranging investments. — Arranging investments in real estate contracts is not a transaction for which a real estate broker's or salesperson's license is required. *Garcia v. N.M. Real Estate Comm'n.*, 1989-NMCA-034, 108 N.M. 591, 775 P.2d 1308, cert. denied, 108 N.M. 624, 776 P.2d 846.

Broker to supervise salespeople. — This section and Section 61-29-11 NMSA 1978 express a clear legislative mandate that brokers, as the persons principally responsible to the public, actually be in a position to supervise the actions of their salespeople. At the same time, the statutes do not require the broker himself to engage in business full-time. 1980 Op. Att'y Gen. No. 80-22.

The exemption contained in Subsection D (now C(4)) applies only to those persons holding the power of attorney and who are not engaged in business as real estate brokers. 1965 Op. Att'y Gen. No. 65-122.

Law reviews. — For article, "Attachment in New Mexico - Part I," see 1 Nat. Res. J. 303 (1961).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 1.

Who is real estate broker within meaning of statute, 167 A.L.R. 774.

Effect of statement of real estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, 17 A.L.R.2d 904.

Duty of real estate broker to disclose that prospective purchaser is a relative, 26 A.L.R.2d 1307.

Payment to broker authorized to sell real property as payment to principal, 30 A.L.R.2d 805.

Power of real estate broker to execute contract of sale in behalf of principal, 43 A.L.R.2d 1014.

Liability of vendor's real-estate broker or agent to purchaser or prospect for misrepresenting or concealing offer or acceptance, 55 A.L.R.2d 342.

Power of real estate broker to bind principal by representations as to character, condition, location, quantity or title of property, 58 A.L.R.2d 10.

Liability of real estate broker for accepting note, check or property, rather than cash, as earnest money, 59 A.L.R.2d 1455.

Misrepresentation as basis of real estate broker's liability for damages or losses sustained by vendor responsible to vendee on account thereof, 61 A.L.R.2d 1237.

Modern view as to right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale, 12 A.L.R.4th 1083.

Right of attorney, as such, to act or become licensed to act as real estate broker, 23 A.L.R.4th 230.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 A.L.R.4th 546.

12 C.J.S. Brokers § 2.

61-29-3. Criminal offender's character evaluation.

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by Sections 61-29-1 through 61-29-18 NMSA 1978.

History: 1953 Comp., § 67-24-20.1, enacted by Laws 1974, ch. 78, § 29.

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Criminal Offender Employment Act to be followed in suspension or revocation action. — The provisions of the Criminal Offender Employment Act must be followed by the real estate commission in any action by the commission to suspend or revoke a broker's or

salesperson's license because of a conviction of a felony or misdemeanor involving moral turpitude. 1982 Op. Att'y Gen. No. 82-02.

Convicted felon, while on parole, is under no disqualification that would prevent him from applying for a license to practice barbering or to practice as a real estate broker or any other trade, profession or occupation in this state. 1957-58 Op. Att'y Gen. No. 58-214 (rendered under former law).

61-29-4. Creation of commission; powers and duties.

A. The "New Mexico real estate commission" is created. The commission shall be appointed by the governor and shall consist of five members who shall have been residents of the state for three consecutive years immediately prior to their appointment, four of whom shall have been associate brokers or qualifying brokers licensed in New Mexico and one of whom shall be a member of the public who has never been licensed as an associate broker or a qualifying broker; provided that not more than one member shall be from any one county within the state. The members of the commission shall serve for a period of five years or until their successors are appointed and qualified. The governor may remove a member for cause. In the event of vacancies, the governor shall appoint members to complete unexpired terms.

B. The commission shall possess all the powers and perform all the duties prescribed by Chapter 61, Article 29 NMSA 1978 and as otherwise provided by law, and it is expressly vested with power and authority to promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce those rules to carry out the provisions of that article.

History: 1953 Comp., § 67-24-21, enacted by Laws 1959, ch. 226, § 3; 1978, ch. 203, § 1; 1983, ch. 261, § 1; 1987, ch. 90, § 2; 1990, ch. 75, § 25; 2003, ch. 22, § 1; 2003, ch. 408, § 30; 2005, ch. 35, § 3; 2022, ch. 39, § 96.

Cross references. — For Uniform Licensing Act, see 61-1-1 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico real estate commission is required to follow the provisions of the State Rules Act when promulgating rules; and after "power and authority to", deleted "make" and added "promulgate rules in accordance with the State Rules Act", and deleted "Prior to a final action on a proposed change or amendment to the rules of the commission, the commission may publish notice of the proposed action in its official publication, distribute the publication to each active licensee and give the time and place for a public hearing on the proposed changes. The hearing shall be held at least thirty days prior to a proposed final action. Changes or amendments to the rules shall be filed in accordance with the procedures of the State Rules Act and shall become effective thirty days after notification to all active licensees of the filing of the changes or amendments."

The 2005 amendment, effective January 1, 2006, requires that real estate commission members be a licensed associate broker or a qualifying broker; provides that in the event of vacancies, the governor shall appoint members to complete the unexpired terms; and provides authority to promulgate rules only.

2003 amendments. — Substantively identical amendments to this section were enacted by Laws 2003, ch. 22, § 1, effective June 20, 2003, and Laws 2003, ch. 408, § 30, effective July 1, 2003, deleting "called 'the commission' in Chapter 61, Article 29 NMSA 1978" following "real estate commission" at the end of the first sentence of the section; deleting "and regulations" following "amendments to the rules" near the beginning of the ninth sentence; and deleting "The commission may employ any staff it deems necessary to assist in carrying out its duties and in keeping its records" following "changes or amendments." at the end of the section. Chapter 408, § 30 also made minor grammatical changes. This section is set out as amended by Laws 2003, ch. 408, § 30. See 12-1-8 NMSA 1978.

The 1990 amendment, effective May 16, 1990, inserted "and as otherwise provided by law" following "Chapter 61, Article 29 NMSA 1978" in the sixth sentence.

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Commission members subject to discretionary removal. — Since the governor may remove any person appointed by him or his predecessor, he can remove any member of the real estate commission at any time without notice or hearing. 1963-64 Op. Att'y Gen. No. 63-134.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 51.

53 C.J.S. Licenses § 9.

61-29-4.1. Additional powers of commission; continuing education programs; minimum requirements.

The commission shall adopt rules providing for continuing education courses in selling, leasing or managing residential, commercial and industrial property as well as courses in basic real estate law and practice and other courses prescribed by the commission. The regulations shall require that every licensee except licensees who were already exempted from continuing education requirements prior to July 1, 2011, as a condition of license renewal, successfully complete a minimum of thirty classroom hours of instruction every three years in courses approved by the commission. The rules may prescribe areas of specialty or expertise and may require that part of the classroom instruction be devoted to courses in the area of a licensee's specialty or expertise.

History: 1978 Comp., § 61-29-4.1, enacted by Laws 1985, ch. 89, § 1; 1993, ch. 253, § 1; 2005, ch. 35, § 4; 2011, ch. 85, § 2; 2013, ch. 167, § 3.

The 2013 amendment, effective June 14, 2013, clarified the continuing education requirements; and in the second sentence, after "requirements prior to", deleted "the effective date of this 2011 act" and added "July 1, 2011" and after "successfully complete", added "a minimum".

The 2011 amendment, effective July 1 2011, required licensees over the age of sixty-five who were not exempt from the requirement prior to the enactment of Laws 2011, ch. 85 to comply with continuing education requirements.

The 2005 amendment, effective January 1, 2006, requires the real estate commission to adopt rules to provide for continuing education courses and for areas of specialty or expertise, but did not change the second sentence that requires the real estate commission to promulgate regulations to require the completion of thirty six hours of instruction every three years.

The 1993 amendment, effective June 18, 1993, deleted the A designation from the beginning of the section.

61-29-4.2. Additional powers of the commission; professional liability insurance; minimum coverage.

A. In addition to the powers and duties granted to the commission pursuant to the provisions of Sections 61-29-4 and 61-29-4.1 NMSA 1978, the commission may adopt rules that require professional liability insurance coverage and may establish the minimum terms and conditions of coverage, including limits of coverage and permitted exceptions. If adopted by the commission, the rules shall require every applicant for an active license and licensee who applies for renewal of an active license to provide the commission with satisfactory evidence that the applicant or licensee

has professional liability insurance coverage that meets the minimum terms and conditions required by commission rule.

B. The commission is authorized to solicit sealed, competitive proposals from insurance carriers to provide a group professional liability insurance policy that complies with the terms and conditions established by commission rule. The commission may approve one or more policies that comply with the commission rules; provided that the maximum annual premium shall not exceed five hundred dollars (\$500) for a licensee, that the minimum coverage shall not be less than one hundred thousand dollars (\$100,000) for an individual claim and not less than a five-hundred-thousand-dollar (\$500,000) aggregate limit per policy and that the deductible shall not be greater than one thousand dollars (\$1,000).

C. Rules adopted by the commission shall permit an active licensee to satisfy any requirement for professional liability insurance coverage by purchasing an individual policy.

D. Rules adopted by the commission shall provide that there shall not be a requirement for a licensee to have professional liability insurance coverage during a period when a group policy, as provided in Subsection B of this section, is not in effect.

History: 1978 Comp., § 61-29-4.2, enacted by Laws 2001, ch. 216, § 1; 2005, ch. 35, § 5; 2008, ch. 18, § 1; 2013, ch. 167, § 4.

The 2013 amendment, effective June 14, 2013, increased the limit on liability insurance premiums; and in Subsection B, in the second sentence, after "shall not exceed", deleted "three hundred dollars (\$300)" and added "five hundred dollars (\$500)".

The 2008 amendment, effective July 1, 2008, increased the maximum annual premium from \$200 to \$300.

The 2005 amendment, effective January 1, 2006, increases the amount for the maximum annual premium that may be charged each licensee for coverage under a group professional liability insurance policy obtained by the real estate commission.

61-29-4.3. Regulation and licensing department; administratively attached.

The commission is administratively attached to the regulation and licensing department.

History: Laws 2001, ch. 163, § 12.

61-29-4.4. Additional powers of commission; fingerprinting and criminal history background checks.

A. All applicants for licensure as provided for in Chapter 61, Article 29 NMSA 1978 shall:

(1) be required to provide fingerprints only upon initial licensure on two fingerprint cards for submission to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history background check;

(2) pay the cost of obtaining the fingerprints and criminal history background checks; and

(3) have the right to inspect or challenge the validity of the records resulting from the background check if the applicant is denied licensure as established by commission rule.

B. Electronic live scans may be used for conducting criminal history background checks.

C. Criminal history records obtained by the commission pursuant to the provisions of this section are confidential. The commission is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in Chapter 61, Article 29 NMSA 1978.

D. Criminal history records obtained by the commission pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses the criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2005, ch. 35, § 6; 2011, ch. 85, § 3; 2019, ch. 209, § 7.

The 2019 amendment, effective July 1, 2020, provided that applicants for licensure shall be required to provide fingerprints only upon initial licensure; in Subsection A, in Paragraph A(1), after "provide fingerprints", added

"only upon initial licensure", and after "criminal history", added "background".

The 2011 amendment, effective July 1 2011, rewrote the section to require fingerprinting and criminal history background checks of applicants for licensure.

61-29-5. Organization of commission.

The commission shall organize by electing a president, vice president and secretary from its members. A majority of the commission shall constitute a quorum and may exercise all powers and duties devolving upon it and do all things necessary to carry into effect the provisions of Chapter 61, Article 29 NMSA 1978. The secretary of the commission shall keep a record of its proceedings; a register of persons licensed as associate brokers and qualifying brokers, showing the name and place of business of each and the date and number of each person's license; and a record of all licenses issued, denied, suspended or revoked. This record shall be open to public inspection at all reasonable times.

History: 1953 Comp., § 67-24-22, enacted by Laws 1959, ch. 226, § 4; 2001, ch. 163, § 2; 2005, ch. 35, § 7.

The 2005 amendment, effective January 1, 2006, requires the secretary of the real estate commission to keep

a register of persons licensed as associate brokers and qualifying brokers.

The 2001 amendment, effective July 1, 2001, substituted "Chapter 61, Article 29 NMSA 1978" for "this act" and "salespersons" for "salesmen".

61-29-5.1. Recompiled.

Recompilations. — Former 61-29-5.1 NMSA 1978, relating to a register of time share projects and applicants

for certificates of registration, enacted by Laws 1986, ch. 97, § 13, has been recompiled as 47-11-11.1 NMSA 1978.

61-29-6. Meeting of the commission.

The commission shall meet at least once each quarter-year at such time and place as may be designated by the commission president, and special meetings may be held upon five days' written notice to each of the commission members by the commission president.

History: 1953 Comp., § 67-24-23, enacted by Laws 1959, ch. 226, § 5; 2005, ch. 35, § 8.

The 2005 amendment, effective January 1, 2006, made style changes.

61-29-7. Reimbursement and expenses.

Each member of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: 1953 Comp., § 67-24-24, enacted by Laws 1959, ch. 226, § 6; 1963, ch. 43, § 28; 1965, ch. 304, § 3; 2003, ch. 22, § 2; 2003, ch. 408, § 31.

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 22, § 2, effective June 20, 2003, and Laws 2003, ch. 408, § 31, effective July 1, 2003, deleting the former second and third sentences concerning the appointment of an administrator,

employment of staff and purchase of supplies. The section is set out as amended by Laws 2003, ch. 408, § 31. See NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 C.J.S. Licenses § 37.

61-29-8. License fees; disposition.

A. Except as provided in Section 61-1-34 NMSA 1978, the following fees shall be established and charged by the commission and paid into the real estate commission fund:

(1) for each examination, a fee established by the commission based on competitive bids for examination services submitted to the commission in response to a commission request for proposals, not to exceed ninety-five dollars (\$95.00);

(2) for each qualifying broker's license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(3) for each associate broker's license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(4) subject to the provisions of Paragraph (10) of this subsection, for each change of place of business or change of employer or contractual associate, a transfer fee not to exceed twenty dollars (\$20.00);

(5) for each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00);

(6) for each license history, a fee not to exceed twenty-five dollars (\$25.00);

(7) for copying of documents by the commission, a fee not to exceed one dollar (\$1.00) per copy;

(8) for each license law and rules booklet, a fee not to exceed ten dollars (\$10.00) per booklet;

(9) for each hard copy or electronic list of licensed associate brokers and qualifying brokers, a fee not to exceed actual costs up to fifty dollars (\$50.00);

(10) for each license reissued for an associate broker because of change of address of the qualifying broker's office or death of the qualifying broker when a successor qualifying broker is replacing the decedent and the associate broker remains in the office or because of a change of name of the office or the entity of the qualifying broker, a fee in an amount not to exceed twenty dollars (\$20.00) to be paid by the qualifying broker or successor qualifying broker as the case may be; but if there are eleven or more affected associate brokers in the qualifying broker's office, the total fee paid to effect reissuance of all of those licenses shall not exceed two hundred dollars (\$200);

(11) for each application to the commission to become an approved sponsor of prelicensing and continuing education courses, a fee not to exceed five hundred dollars (\$500) and for each renewal thereof, a fee not to exceed five hundred dollars (\$500);

(12) for each application to the commission to become an approved instructor of prelicensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course; and

(13) for each application to the commission to renew certification as a commission-approved instructor, a fee not to exceed one hundred dollars (\$100).

B. All fees set by the commission shall be set by rule and only after all requirements have been met as prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or amendments to the rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

C. The commission shall deposit all money received by it from fees in accordance with the provisions of Chapter 61, Article 29 NMSA 1978 with the state treasurer, who shall keep that money in a separate fund to be known as the "real estate commission fund", and money so deposited in that fund is appropriated to the commission for the purpose of carrying out the provisions of Section 61-29-4 NMSA 1978 or to maintain the real estate recovery fund as required by the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978] and shall be paid out of the fund upon the vouchers of the executive secretary of the commission or the executive secretary's designee; provided that the total fees and charges collected and paid into the state treasury and any money so deposited shall be expended only for the purposes authorized by Chapter 61, Article 29 NMSA 1978.

History: 1953 Comp., § 67-24-25, enacted by Laws 1959, ch. 226, § 7; 1977, ch. 295, § 1; 1983, ch. 261, § 2; 1987, ch. 90, § 3; 1990, ch. 75, § 26; 1992, ch. 21, § 1; 1995, ch. 143, § 1; 2001, ch. 163, § 3; 2003, ch. 22, § 3; 2005, ch. 35, § 9; 2011, ch. 85, § 4; 2020, ch. 6, § 56.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2011 amendment, effective July 1 2011, imposed a fee for examination services and changed the fee for a copy of the list of brokers from twenty dollars to the actual cost of the list, but not more than fifty dollars.

The 2005 amendment, effective January 1, 2006, specifies the fees for the issuance and re-issuance of qualifying broker's and associate broker's licenses and eliminates the provision for a proportionate refund of fees for the issuance and renewal of licenses for less than a three year period.

The 2003 amendment, effective June 20, 2003, substituted "two hundred seventy dollars (\$270)" for "one hundred eighty dollars (\$180)" in two places in Subsection A(2); in Subsection A(3) added "real estate" preceding "salesperson's license issued" near the beginning, substituted "two hundred seventy dollars (\$270)" for "one hundred eighty dollars (\$180)" in two places; in Subsection A(10), substituted "for each license reissued for a real estate salesperson" for "when a license must be reissued for a salesperson" at the beginning, deleted "the licensed broker or successor licensed broker as the case may be shall pay to the commission as the affected salesperson's license reissue" near the middle, and inserted "to be paid by the licensed broker or successor broker as the case may be" following "twenty dollars \$20.00" near the middle; and added Paragraphs A(11), (12), and (13).

The 2001 amendment, effective July 1, 2001, substituted "a fee not to exceed" for "a fee of" throughout the section; in Subsection A, inserted "established and" in the preliminary language; increased the examination fee in Paragraph (1) from sixty dollars to ninety-five dollars; deleted "set by the commission" following "a fee" in Paragraphs (7) to (9); deleted "additional" preceding "license law" in Paragraph (8); substituted "hard copy or electronic list" for "additional directory"; deleted Paragraph (10), relating to the fee for supplements to the directory, and renumbered the remaining paragraph accordingly; inserted "an amount not to exceed" preceding "twenty dollars" in the present Paragraph (10); and substituted "executive secretary of the commission or his designee" for "president and secretary of the commission" in Subsection C.

The 1995 amendment, effective July 1, 1995, in Subsection A, increased the licensing fees from sixty dollars

to one hundred and eighty dollars and deleted "annual" preceding "renewal" in Paragraphs (2) and (3), added the proviso at the beginning of Paragraph (4), added Paragraph (11), and made minor stylistic changes throughout the subsection; and added Subsection D.

The 1992 amendment, effective May 20, 1992, substituted the present section catchline for "License fees and disposition thereof"; substituted "sixty dollars (\$60.00)" for "thirty dollars (\$30.00)" in Subsection A(1); substituted "sixty dollars (\$60.00)" for "forty dollars (\$40.00)" in Subsections A(2) and A(3); substituted "twenty dollars (\$20.00)" for "ten dollars (\$10.00)" in Subsections A(4) and A(5); added Subsections A(6) to A(10); added present Subsection B; redesignated former Subsection B as present Subsection C; and in Subsection C, restructured the former four sentences as a single sentence, substituted "carrying out the provisions" for "paying the expenses of the commission incurred under the provisions" near the middle of the subsection, and made stylistic changes throughout the subsection.

The 1990 amendment, effective May 16, 1990, in Subsection B, divided the subsection into four sentences, deleted "special" before "fund" in the present second sentence and substituted "or as otherwise provided by law" for "and shall be paid out of the fund in the state treasury" at the end thereof and, in the present third sentence, added "Expenditures shall be made from the fund" at the beginning and deleted "provided that" at the end.

ANNOTATIONS

Cash balances not to revert to general fund. —

Any possible or theoretical cash balances credited to the "real estate commission fund," which have accumulated pursuant to this section as the result of the collection of license fees and examination fees, should not revert to the general fund at the end of the licensing year, 1959-60 Op. Att'y Gen. No. 60-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 8.

Validity of statute or ordinance requiring real estate broker to procure license, 39 A.L.R.2d 606, 53 C.J.S. Licenses §§ 22, 71.

61-29-9. Qualifications for license.

A. Licenses shall be granted only to persons who meet the requirements for licensure prescribed by law and are deemed by the commission to be of good repute and competent to transact the business of a qualifying broker or an associate broker in a manner that safeguards the interests of the public.

B. An applicant for a qualifying broker's license or an associate broker's license shall have reached the age of majority. Each applicant for a qualifying broker's license or an associate broker's license shall have passed the real estate broker's examination approved by the commission and shall:

(1) furnish the commission with certificates of completion of ninety hours of classroom instruction consisting of commission-approved thirty-hour courses in real estate principles and practice, real estate law and broker basics; or

(2) in the case of an out-of-state applicant, furnish the commission with a certified license history from the real estate licensing jurisdiction in the state or states in which the applicant is currently or has been previously licensed as a real estate broker, or certificates of completion of those courses issued by the course sponsor or provider, certifying that the applicant has or had a license in that state and has completed the equivalent of sixty classroom hours of prelicensing education approved by that licensing jurisdiction in real estate principles and practice and real estate law. Upon receipt of such documentation, the commission may waive sixty hours of the ninety hours of prelicensing education required to take the New Mexico real estate broker's

examination and may waive the national portion of the examination. The applicant shall complete the commission-approved thirty-hour broker basics class to be eligible to take the state portion of the New Mexico real estate broker's examination.

C. An applicant for a qualifying broker's license shall have passed the New Mexico real estate broker's examination and had an active associate broker's license or equivalent real estate license for at least two of the last five years immediately preceding application for a qualifying broker's license and shall furnish the commission with a certificate of completion of the commission-approved thirty-hour brokerage office administration course and any additional educational courses required by the commission by rule.

D. Notwithstanding Subsection C of this section, a qualifying broker shall not supervise associate brokers until the qualifying broker has had an active associate broker's or qualifying broker's license or equivalent real estate license for at least four years. Licensees who hold an active or inactive qualifying broker's license on January 1, 2018 are exempt from this subsection.

E. The commission shall require the information it deems necessary from every applicant to determine that applicant's honesty, trustworthiness and competency.

History: 1953 Comp., § 67-24-26, enacted by Laws 1959, ch. 226, § 8; 1965, ch. 304, § 4; 1973, ch. 40, § 1; 1977, ch. 295, § 2; 1979, ch. 94, § 1; 1983, ch. 261, § 3; 1999, ch. 272, § 35; 2001, ch. 163, § 4; 2003, ch. 22, § 4; 2003, ch. 329, § 1; 2005, ch. 35, § 10; 2011, ch. 85, § 5; 2013, ch. 167, § 5; 2017, ch. 131, § 1; 2021, ch. 70, § 12.

Cross references. — For age of majority, see 12-2A-3 and 28-6-1 NMSA 1978.

For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed legal residency of the United States as a qualification for licensure as a qualifying broker or associate broker; and in Subsection B, after "license shall", deleted "be a legal resident of the United States and".

The 2017 amendment, effective January 1, 2018, authorized the real estate commission to require an applicant for a qualifying broker's license to complete additional educational courses, restricted a qualifying broker from supervising an associate broker until the qualifying broker has had an active associate or qualifying broker's license or equivalent real estate license for at least four years, and provided an exemption for certain licensees; in Subsection C, after "administration course", added "and any additional educational courses required by the commission by rule"; and added a new Subsection D and redesignated the succeeding subsection accordingly.

The 2013 amendment, effective June 14, 2013, provided for nonresident broker licensing; in Paragraph (1) of Subsection B, after "furnish the commission with", deleted "a certificate of completion of", after "ninety", deleted "classroom", after "hours of", added "classroom", and after "classroom instruction", deleted "in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course" and added the remainder of the sentence; in Paragraph (2) of Subsection B, in the first sentence, added "in the case of an out-of-state applicant", after "commission with a", deleted language which provided for minimum continuing education requirements for out-of-state applicants and added the remainder of the sentence and added the second and third sentences; in Subsection C, after "broker's license shall have", deleted "been actively engaged in the real estate business as an associate broker or real estate salesperson" and added "passed the New Mexico real estate broker's examination and had an active associate broker's license or equivalent real estate license", and after "shall furnish the commission", deleted the remainder to the sentence which required the applicant to provide proof that the applicant had completed one hundred twenty hours of prelicensing courses and added "with a certificate of completion of the

commission-approved thirty-hour brokerage office administration course"; and deleted former Subsection D, which provided the requirements for a salesperson to qualify for an associate broker's license.

The 2011 amendment, effective July 1 2011, removed corporations, partnerships and associations from broker licensing.

The 2005 amendment, effective January 1, 2006, specifies the qualifications for qualifying and associate broker licenses; eliminates the requirement that an applicant shall have been a real estate sales person; and requires that applicants complete ninety classroom hours of instruction, thirty hours of which are broker basic courses or provide a certificate that the applicant is a licensed real estate broker in another state and has completed ninety classroom hours in basic real estate courses; eliminates the requirements that the applicant furnish proof of equivalent experience; eliminates provisions for the real estate salesperson's license; requires that an applicant for a qualifying broker's license shall have been engaged in the real estate business as an associate broker or salespersons for two years and have completed one hundred twenty hours of real estate courses; provides that the holder of a salesperson's license shall automatically qualify for an associate broker's license; and provides that to be eligible for a qualifying broker's license, a salesperson who automatically obtains an associate broker's license must pass a real estate broker's examination.

The 2003 amendment, effective July 1, 2003, deleted "and, except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico" following "age of majority" near the middle of Subsection B; and added Subsection B(5).

The 2001 amendment, effective July 1, 2001, in Subsection B, deleted "real estate" preceding "broker's license" and inserted "have passed the real estate examination approved by the commission and shall" in the introductory language; substituted "a broker basics course" for "ninety classroom hours of instruction in basic real estate courses" in Paragraph (1); inserted "thirty hours of which shall have been a broker basics course" at the end of Paragraphs (3) and (4); inserted "have passed the real estate examination approved by the commission" in Subsection C; and substituted "may" for "shall be entitled to" in the second sentence of Subsection D.

The 1999 amendment, effective June 18, 1999, in the introductory language of Subsection B, substituted "and, except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico" for "and have been an actual bona fide resident of New Mexico for six months next preceding the filing of application"; deleted "in New Mexico" following "salesperson" in Subsection B(1); and deleted

"and be a resident of New Mexico preceding the filing of application" following "age of majority" in Subsection C.

ANNOTATIONS

Persons of "good repute". — The "good repute" requirement is interpreted to relate to honesty and trustworthiness. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

Suit for commission to be in name of licensed broker. — As an action to recover a real estate commission may only be brought in the name of the licensed broker, evidence showing corporation may be entitled to a license, or that an officer thereof had a license, was insufficient to enable corporation to bring suit in its own name. The corporation itself must be licensed to bring suit. *Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Section expressly authorizes broker to hold more than one license, provided that person is actively engaged in the real estate business of the partnership, corporation or other business association for which he is the qualifying party. The statute does not authorize an

individual to have more than one license in an individual capacity. 1980 Op. Att'y Gen. No. 80-22.

Apprenticeship not necessary. — There is nothing in this article requiring that an apprenticeship be served before an applicant can apply for a broker's license; to the contrary, Section 61-29-10 NMSA 1978 specifically sets out the means to be used by the commission in determining applicant's reputation and competency. 1963-64 Op. Att'y Gen. No. 63-110.

When license under Mobile Housing Act (now Manufactured Housing Act) required. — When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under the Mobile Housing Act (now Manufactured Housing Act). 1982 Op. Att'y Gen. No. 82-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 12.

12 C.J.S. Brokers § 19.

61-29-10. Application for license and examination.

A. All applications for licenses to act as qualifying brokers and associate brokers shall be made in writing to the commission and shall contain such data and information as may be required upon a form to be prescribed and furnished by the commission. The application shall be accompanied by:

(1) the recommendation of two reputable citizens who own real estate in the county in which the applicant resides, which recommendation shall certify that the applicant is of good moral character, honest and trustworthy; and

(2) the triennial license fee prescribed by the commission.

B. In addition to proof of honesty, trustworthiness and good reputation, an applicant shall pass a written examination approved by the commission. The examination shall be given at the time and places within the state as the commission shall prescribe; however, the examination shall be given not less than two times during each calendar year. The examination shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisals, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of Chapter 61, Article 29 NMSA 1978.

C. An applicant is not permitted to engage in the real estate business until the applicant has passed the approved examination, complied with the other requirements of Chapter 61, Article 29 NMSA 1978, and until a license has been issued to the applicant.

D. Notice of passing or failing to pass the examination shall be given to an applicant not later than three weeks following the date of the examination.

E. The commission may establish educational programs and procure qualified personnel, facilities and materials for the instruction of persons desiring to become qualifying brokers or associate brokers or desiring to improve their proficiency as qualifying brokers or associate brokers. The commission may inspect and accredit educational programs and courses of study and may establish standards of accreditation for educational programs conducted in this state. The expenses incurred by the commission in activities authorized pursuant to this subsection shall not exceed the total revenues received and accumulated by the commission.

History: 1953 Comp., § 67-24-27, enacted by Laws 1959, ch. 226, § 9; 1965, ch. 304, § 5; 1979, ch. 94, § 2; 1981, ch. 22, § 1; 2001, ch. 163, § 5; 2005, ch. 35, § 11.

Cross references. — For age of majority, see 28-6-1 NMSA 1978.

The 2005 amendment, effective January 1, 2006, provides for applications and examinations of applicants for licenses to act as qualifying broker and as associate broker.

The 2001 amendment, effective July 1, 2001, in Subsection A, deleted "New Mexico real estate" preceding "commission"; deleted "or has his place of business" following "resides" in Paragraph (1); in Paragraph (2), substituted "triennial" for "annual", deleted "which shall not be refunded in any event" from the end of the paragraph; in Subsection B, substituted "approved by" for "prepared by or under the supervision of" in the first sentence; removed the distinction between examinations for brokers

and those for salesmen and deleted provisions that only applied to one examination or the other; in Subsection C, deleted "either as a broker or salesman" following "real estate business", inserted "approved" preceding "examination"; in Subsection E, substituted "brokers or salespersons" for "real estate brokers or salesmen" in two places, and substituted "activities authorized pursuant to" for "enabled under the provisions of" in the last sentence.

ANNOTATIONS

License required to sue for commission. — A person who simply brings two parties together in a real estate transaction must be licensed to sue for the recovery of a commission. To rule otherwise would be to violate the clear intent of the legislature in requiring that real estate "brokers" or salespersons be licensed. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Apprenticeship not necessary. — There is nothing in this article requiring that an apprenticeship be served before an applicant can apply for a broker's license; to the

contrary, this section specifically sets out the means to be used by the commission in determining applicant's reputation and competency. 1963-64 Op. Att'y Gen. No. 63-110.

Relicensing of out-of-state broker returning to state. — An individual who has been licensed as a resident real estate broker in the state of New Mexico, and who has established a residence in another state or country may subsequently return to New Mexico and be relicensed as a real estate broker upon payment of the necessary fee and filing of the required bond and meeting any other needed requirements without applying for and taking a broker's examination as required of applicants who have not previously been licensed as real estate brokers, provided that the real estate board in its discretion desires to waive the examination. 1957-58 Op. Att'y Gen. No. 58-186.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 12.

12 C.J.S. Brokers § 19.

61-29-10.1. Brokerage relationships; creation.

A. For all regulated real estate transactions first executed on or after January 1, 2000, no agency relationship between a buyer, seller, landlord or tenant and a brokerage shall exist unless the buyer, seller, landlord or tenant and the brokerage agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant or licensee, or created orally or by implication.

B. A brokerage may provide real estate services to a client pursuant to an express written agreement that does not create an agency relationship and no agency duties will be imposed on the brokerage.

C. A brokerage may provide real estate services to a customer without entering into an express written agreement and without creating an agency relationship and no agency duties will be imposed on the brokerage.

D. The commission shall promulgate rules governing the rights of clients or customers and the rights, responsibilities and duties of a brokerage in those brokerage relationships that are subject to the jurisdiction of the commission.

History: Laws 1999, ch. 127, § 2; 2003, ch. 36, § 2.

The 2003 amendment, effective January 1, 2004, inserted present Subsections B and C and redesignated former Subsection B as present Subsection D; in present Subsection D deleted "and responsibilities" following

"governing the rights" near the beginning and substituted "a brokerage in those brokerage relationships that are subject to the jurisdiction of the commission" for "the brokerage in an agency relationship" at the end.

61-29-10.2. Licensee's duties; disclosure.

A. Prior to the time a licensee generates or presents any written document that has the potential to become an express written agreement, the licensee shall give to a prospective buyer, seller, landlord or tenant a list of the licensee's duties that are in accordance with requirements established by the commission.

B. Licensees shall perform all duties that are established for licensees by the commission.

History: Laws 1999, ch. 127, § 3; 2003, ch. 36, § 3; 2005, ch. 35, § 12.

The 2005 amendment, effective January 1, 2006, provides that prior to the time a licensee prepares or presents a document that will be a written agreement, the licensee must provide a list of the licensee's duties.

The 2003 amendment, effective January 1, 2004, substituted "Licensee's Duties - Disclosure" for "Brokerage Relationship; Disclosure" in the heading; designated the

former first paragraph as Subsection A and added Subsection B; and substituted "at the time when the parties enter into an express written agreement, a list of the licensee's duties that are in accordance with requirements established by the commission" for "at the first substantive contact a brokerage relationship disclosure in accordance with requirements established by the commission" at the end of Subsection A.

61-29-10.3. Repealed.

Repeals. — Laws 2003, ch. 36, § 4 repealed 61-29-10.3, as enacted by Laws 1999, ch. 127, § 4, relating to brokerage nonagency relationships, effective January 1, 2004.

For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

61-29-11. Issuance, renewal and surrender of licenses.

A. The commission shall issue to each qualified applicant a license in the form and size prescribed by the commission.

B. The license shall show the name and address of the licensee. An associate broker's license shall show the name of the qualifying broker by whom the associate broker is engaged. The commission shall deliver or mail the license of the associate broker to the qualifying broker by whom the associate broker is engaged, and the qualifying broker shall display the license at the brokerage from which the associate broker will be conducting real estate business on behalf of the brokerage. The license of the associate broker shall remain in the custody and control of the qualifying broker as long as the associate broker is engaged by that qualifying broker.

C. Any qualifying broker's or associate broker's license suspended or revoked by an order, stipulated agreement or settlement agreement approved by the commission shall be surrendered to the commission by the broker upon the delivery of the order to the broker by the commission, or on the effective date of the order. All real-estate-related activity conducted under such license shall cease for the duration of the license suspension or revocation, and any associate broker licenses hanging with a qualifying broker whose license is suspended or revoked shall be automatically placed on inactive status until a new qualifying broker or a qualifying broker in charge is designated.

D. Every license shall be renewed every three years on or before the last day of the month following the licensee's month of birth. Upon written request for renewal by the licensee, the commission shall certify renewal of a license if there is no reason or condition that might warrant the refusal of the renewal of a license. The licensee shall provide proof of compliance with continuing education requirements and pay the renewal fee. If a licensee has not made application for renewal of license, furnished proof of compliance with continuing education requirements and paid the renewal fee by the license renewal date, the license shall expire. The commission may require a person whose license has expired to apply for a license as if the person had not been previously licensed under Chapter 61, Article 29 NMSA 1978 and further require that the person be reexamined. The commission shall require a person whose license has expired to pay when the person applies for a license, in addition to any other fee, a late fee. If during a period of one year from the date the license expires the person or the person's spouse is either absent from this state on active duty military service or the person is suffering from an illness or injury of such severity that the person is physically or mentally incapable of making application for a license, payment of the late fee and reexamination shall not be required by the commission if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the commission for a license. A copy of that person's or that person's spouse's military orders or a certificate from the applicant's physician shall accompany the application. A person excused by reason of active duty military service, illness or injury as provided for in this subsection may make application for a license without imposition of the late fee. All fees collected pursuant to this subsection shall be disposed of in accordance with the provisions of Section 61-29-8 NMSA 1978. The revocation of a qualifying broker's license automatically suspends every associate broker's license granted to any person by virtue of association with the qualifying broker whose license has been revoked, pending a change of qualifying broker. Upon the naming of a new qualifying broker, the suspended license shall be reactivated without charge if granted during the three-year renewal cycle.

E. A qualifying broker shall conduct brokerage business under the trade name and from the brokerage address registered with the commission. Every brokerage shall have a qualifying broker in charge. The license of the qualifying broker and each associate broker associated with that qualifying broker shall be prominently displayed in each brokerage office. The address of the office shall be designated in the qualifying broker's license, and a license issued shall not authorize the

licensee to transact real estate business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before the removal or within ten days thereafter, designating the new location of the licensee's office and paying the required fee, whereupon the commission shall issue a license for the new location if the new location complies with the terms of Chapter 61, Article 29 NMSA 1978. A qualifying broker shall maintain a sign at the brokerage office of such size and content as the commission prescribes.

F. When an associate broker is discharged or terminates association or employment with the qualifying broker with whom the associate broker is associated, the qualifying broker shall deliver or mail the associate broker's license to the commission within forty-eight hours. The commission shall hold the license on inactive status. It is unlawful for an associate broker to perform any of the acts authorized by Chapter 61, Article 29 NMSA 1978 either directly or indirectly under authority of an inactive license after the associate broker's association with a qualifying broker has been terminated and the associate broker's license has been returned to the commission until the appropriate fee has been paid and the license has been reissued and reactivated by the commission.

History: 1953 Comp., § 67-24-28, enacted by Laws 1959, ch. 226, § 10; 1965, ch. 304, § 6; 1977, ch. 295, § 3; 1979, ch. 94, § 3; 1980, ch. 82, § 11; 1981, ch. 22, § 2; 1983, ch. 261, § 4; 1985, ch. 89, § 2; 1987, ch. 90, § 4; 1993, ch. 253, § 2; 1995, ch. 143, § 2; 2001, ch. 163, § 7; 2003, ch. 22, § 5; 2005, ch. 35, § 13; 2013, ch. 167, § 6.

The 2013 amendment, effective June 14, 2013, provided for the surrender of suspended and revoked licenses; and added Subsection C.

The 2005 amendment, effective January 1, 2006, requires that an associate broker's license show the name of the qualifying broker by whom the associate broker is engaged; requires the real estate commission to send the associate broker's license to the qualifying broker by which the associate broker is engaged; requires the qualifying broker to display the associate broker's license at the brokerage; provides that the associate broker's license remains in the custody of the qualifying broker as long as the associate broker is engaged by the qualifying broker; provides that the revocation of a qualifying broker's license suspends the license of every associate broker engaged by the qualifying broker; requires qualifying brokers to conduct brokerage business under the trade name and at the address registered with the real estate commission; requires that the qualifying broker's license and the licenses of associate brokers be displayed at the brokerage office; and provides that if an associate broker ceases to be engaged by the qualifying broker, the qualifying broker must send the associate broker's license to the real estate commission to be held in inactive status.

The 2003 amendment, effective June 20, 2003, in Subsection C, deleted "of one hundred dollars (\$100)" at the end of the sixth sentence; in Subsection D, substituted "within this state a fixed office that conforms" for "a fixed office within this state which shall be so located as to conform" following "broker shall maintain" near the beginning of the first sentence, and inserted "real estate" preceding "salesperson" near the middle of the third sentence.

The 2001 amendment, effective July 1, 2001, deleted "permanent" preceding "license" in Subsection A; in Subsection B, deleted "real estate" preceding "broker" in two places; in Subsection C, substituted the reactivation provision and conditions thereto for suspended licenses for the provision that a new license will be issued in the event that the real estate salesperson's license is suspended, and will be free if re-issued in the same year it was granted; in Subsection D, deleted "under Chapter 61, Article 29 NMSA 1978" following "operated by a licensed broker", inserted "who is a natural person", deleted "or under contract to" following "associated with", deleted "except a licensed branch office" following "any other address", in Subsection E, deleted "immediately" preceding

"deliver" and inserted "within forty-eight hours" in the first sentence, substituted "an inactive license" for "such license" in the second sentence; and deleted Subsection F, concerning the renewal of licenses within a certain time period in order to coordinate certain requirements.

The 1995 amendment, effective July 1, 1995, in Subsection C, rewrote the first sentence which read "Every license shall be subject to annual renewal on the last day of the licensee's month of birth", made a related change in the third sentence, and deleted "annual" and "annually" preceding "renewal" throughout the subsection; made a stylistic change in Subsection D; and added Subsection F.

The 1993 amendment, effective June 18, 1993, inserted "or his spouse" and "the person" preceding "is suffering" in the sixth sentence and substituted "that person or his spouse's" for "the person's" in the seventh sentence, in Subsection C; deleted "for cancellation" from the end of the first sentence, inserted the second sentence, and substituted "to the commission" for "for a cancellation" in the last sentence, in Subsection E; and made stylistic changes in Subsections C and D.

ANNOTATIONS

Fiduciary duties of salesperson extended to broker. — Because a real estate salesperson must work under a broker, when a principal buyer or seller engages a real estate salesperson as an agent, the principal also engages the salesperson's qualifying broker as an agent, thus extending the fiduciary duty owed to the principal buyer or seller up the salesperson's chain of command to the broker. Although agency fiduciary obligations and liabilities may extend from a salesperson to the qualifying broker, the fiduciary duties of one real estate salesperson are not attributable to another salesperson operating under the same qualifying broker unless one salesperson is at fault in appointing, supervising or cooperating with the other. *Moser v. Bertram*, 1993-NMSC-040, 115 N.M. 766, 858 P.2d 854.

Brokers must supervise their salespeople. — Section 61-29-2 NMSA 1978 and this section express a clear legislative mandate that brokers, the persons principally responsible to the public, actually be in a position to supervise the actions of their salespeople. At the same time, the statutes do not require the broker himself to engage in business full-time. 1980 Op. Att'y Gen. No. 80-22.

Relicensing of out-of-state broker returning to state. — An individual who has been licensed as a resident real estate broker in the state of New Mexico, and who has established a residence in another state or country may subsequently return to New Mexico and be relicensed as a real estate broker upon payment of the necessary fee and filing of the required bond and meeting

any other needed requirements without applying for and taking a broker's examination as required of applicants who have not previously been licensed as real estate brokers, provided that the real estate board in its discretion

desires to waive the examination. 1957-58 Op. Att'y Gen. No. 58-186.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 21, 24, 26, 27, 29.
12 C.J.S. Brokers §§ 16, 20.

61-29-12. Refusal, suspension or revocation of license for causes enumerated.

A. In accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the commission may refuse to issue a license or may suspend, revoke, limit or condition a license if the applicant or licensee has, by false or fraudulent representations, obtained a license or, in performing or attempting to perform any of the actions specified in Chapter 61, Article 29 NMSA 1978, an applicant or licensee has:

- (1) made a substantial misrepresentation;
- (2) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise; or used any trade name or insignia of membership in any real estate organization of which the licensee is not a member;
- (3) paid or received a rebate, profit, compensation or commission to or from any unlicensed person, except the licensee's principal or other party to the transaction, and then only with that principal's written consent;
- (4) represented or attempted to represent a qualifying broker other than a qualifying broker with whom the licensee is associated without the express knowledge and consent of that qualifying broker;
- (5) failed, within a reasonable time, to account for or to remit any money coming into the licensee's possession that belongs to others, commingled funds of others with the licensee's own or failed to keep funds of others in an escrow or trustee account or failed to furnish legible copies of all listing and sales contracts to all parties executing them;
- (6) been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude;
- (7) employed or compensated, directly or indirectly, a person for performing any of the acts regulated by Chapter 61, Article 29 NMSA 1978 who is not a licensed qualifying broker or an associate broker; provided, however, that a qualifying broker may pay a commission to a qualifying broker of another state as provided in Section 61-29-16.1 NMSA 1978;
- (8) failed, if a qualifying broker, to place as soon after receipt as is practicably possible, after securing signatures of all parties to the transaction, any deposit money or other money received by the qualifying broker in a real estate transaction in a custodial, trust or escrow account, maintained by the qualifying broker in a bank or savings and loan institution or title company authorized to do business in this state, in which the funds shall be kept until the transaction is consummated or otherwise terminated, at which time a full accounting of the funds shall be made by the qualifying broker. Records relative to the deposit, maintenance and withdrawal of the funds shall contain information as may be prescribed by the rules of the commission. Nothing in this paragraph prohibits a qualifying broker from depositing nontrust funds in an amount not to exceed the required minimum balance in each trust account so as to meet the minimum balance requirements of the bank necessary to maintain the account and avoid charges. The minimum balance deposit shall not be considered commingling and shall not be subject to levy, attachment or garnishment. This paragraph does not prohibit a qualifying broker from depositing any deposit money or other money received by the qualifying broker in a real estate transaction with another cooperating broker who shall in turn comply with this paragraph;
- (9) failed, if an associate broker, to place as soon after receipt as is practicably possible in the custody of the associate broker's qualifying broker, after securing signatures of all parties to the transaction, any deposit money or other money entrusted to the associate broker by any person dealing with the associate broker as the representative of the qualifying broker;
- (10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;

(11) committed an act, whether of the same or different character from that specified in this subsection, that is related to dealings as a qualifying broker or an associate broker and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act; or

(12) been the subject of disciplinary action as a licensee while licensed to practice real estate in another jurisdiction, territory or possession of the United States or another country.

B. An unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker, employee, partner or associate of a qualifying broker shall not be cause for the revocation of a license of the qualifying broker unless it appears to the satisfaction of the commission that the qualifying broker had guilty knowledge of the unlawful act or violation.

History: 1953 Comp., § 67-24-29, enacted by Laws 1959, ch. 226, § 11; 1965, ch. 304, § 7; 1981, ch. 22, § 3; 1983, ch. 261, § 5; 1984, ch. 56, § 1; 1987, ch. 90, § 5; 1991, ch. 13, § 1; 2001, ch. 163, § 8; 2005, ch. 35, § 14; 2011, ch. 85, § 6; 2022, ch. 39, § 97.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico real estate commission is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; and in Subsection A, added "In accordance with the Uniform Licensing Act".

The 2011 amendment, effective July 1 2011, permitted the payment of a commission to a qualified broker or another state if, pursuant to Section 61-29-16.1 NMSA 1978, the nonresident broker has entered in to a transaction-specific contract with a resident broker and has consented to being sued in New Mexico.

The 2005 amendment, effective January 1, 2006, permits the real estate commission to issue license with limitations or conditions if the applicant or licensee has obtained a license by false or fraudulent representations or performed or attempted to perform the prescribed acts specified in this section and provides that an unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker is not cause for revocation of a qualifying broker's license unless the qualifying broker had guilty knowledge of the act.

The 2001 amendment, effective July 1, 2001, inserted the Subsection A and B designations and redesignated former Subsections A to K as Paragraphs A(1) to A(11); deleted "real estate" preceding "broker" throughout the section; in Subsection A, substituted "refuse to issue or may suspend" for "refuse a license for cause or suspend", and "an applicant or licensee has:" for "is deemed to be guilty of:" in the introductory language; substituted "with whom he is associated" for "with whom he is licensed" in Paragraph (4); inserted "after securing signatures of all parties to the transaction" in Paragraphs (8) and (9); deleted "in the interests of the public and in conformance with the provisions of Chapter 61, Article 29 NMSA 1978" from the end of Paragraph (10); substituted "committed an act" for "any other conduct" in Paragraph (11); and added Paragraph (12).

The 1991 amendment, effective June 14, 1991, substituted "in Chapter 61, Article 29 NMSA 1978" for "herein" in the introductory paragraph; substituted the language beginning with "unlicensed person" for "person other than his principal" at the end of Subsection C; and made minor stylistic changes in Subsections E and K.

ANNOTATIONS

Revocation for "substantial misrepresentations". — The commission may suspend a license on the grounds that the licensee misrepresented to prospective buyers both the size of the property in question and the age of the roof. *Wolfley v. Real Estate Comm'n*, 1983-NMSC-064, 100 N.M. 187, 668 P.2d 303.

If the subjects of misrepresentations on application forms are material, i.e., "substantial misrepresentations", the real estate commission can, absent intervening

equities, revoke the license even though there is no actual or intentional fraud. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

The test of whether a misrepresentation is substantial is if it operates as an inducement to the real estate commission to do that which it should not otherwise have done. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

Where a license to sell real estate was revoked for false or fraudulent representations in applications with respect to unpaid liens or judgments, but the real estate commission's findings and conclusions did not resolve in any meaningful way whether licensee intended to deceive and to induce the commission to act in reliance upon a misrepresentation of fact known by him to be untrue, and there were no specific findings and conclusions by the commission to afford the supreme court a clear understanding that the decision was based upon false representations relevant and material to facts bearing upon the good repute and competence of the licensee in the public interest, the cause was remanded to the commission with express directions to enter proper findings of fact and conclusions of law, together with a final order. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

Substantial evidence to support commission's suspension of broker's license based on Paragraph A(5). *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Broker to have knowledge of building code and zoning ordinances. — It is incumbent upon the broker to have a general knowledge of the building code and the zoning ordinances which deal with the particular property being offered for sale or which is being purchased. *Amato v. Rathbun Realty, Inc.*, 1982-NMCA-095, 98 N.M. 231, 647 P.2d 433.

Nonresident broker may share in commission. — This section modifies Sections 61-29-1 and 61-29-16 NMSA 1978 to the extent that a nonresident broker may, in a limited situation, share in a commission. He may only do so, however, through cooperation with a New Mexico licensed broker. *Hayes v. Reeves*, 1977-NMSC-092, 91 N.M. 174, 571 P.2d 1177.

Generally, as to establishing custodial, trust or escrow accounts. — No regulation of the real estate commission requires a custodial, trust or escrow account prior to the receipt of funds appropriate for deposit in such account. *McCaughy v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

Jurisdiction where landowner claims acting as broker. — Under Section 61-29-2 NMSA 1978 if a landowner represents to either the buyer or seller that he is acting as a broker, the real estate commission has jurisdiction over the transaction. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Hiring of note broker for sale of real estate contract. — Because the seller of a real estate contract, who

hired a note broker to handle the sale, was not acting as a real estate broker during the sale, the commission lacked jurisdiction to revoke the seller's license for misrepresentation. *Vihstadt v. Real Estate Comm'n*, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Applicability of Paragraph A(3) prohibition.

— The prohibition of Subsection C (now Paragraph A(3)) is applicable to a broker or salesman representing the seller of real estate giving the purchaser trading stamps, free down payments on the property, moving costs, etc., when it can be shown that the real estate broker or salesman gave one or more of the items listed to the purchaser of the property as an integral part of a transaction involving the purchase and sale of the property. 1963-64 Op. Att'y Gen. No. 63-28 (rendered prior to 1991 amendment).

Payment of commission to buyer who is not principal prohibited.

— Subsection C (now Paragraph A(3)) precludes a licensed salesman or broker from paying any portion of his commission to a buyer who is not his principal, regardless of disclosure to the principal of the arrangement. 1981 Op. Att'y Gen. No. 81-25 (rendered prior to 1991 amendment).

In order to properly make sense of the reference in Subsection C (now Paragraph A(3)) to "paying," and to give effect to the legislative intent indicated by that reference, the words "to or" may be read into that subsection preceding "from any person." 1981 Op. Att'y Gen. No. 81-25 (rendered prior to 1991 amendment).

Criminal Offender Employment Act to be followed in suspension or revocation action. — The provisions of the Criminal Offender Employment Act must be followed by the real estate commission in any action by the commission to suspend or revoke a broker's or salesperson's license because of a conviction of a felony

or misdemeanor involving moral turpitude. 1982 Op. Att'y Gen. No. 82-02.

Law reviews. — For article, "To Purify the Bar: A Constitutional Approach to Non-Professional Misconduct," see 5 Nat. Res. J. 299 (1965).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 10, 21 to 29.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Suspension or revocation of real estate broker's license on ground of discrimination, 42 A.L.R.3d 1099.

Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties, 68 A.L.R.3d 530.

Real estate broker's liability for misrepresentations as to income from, or earnings of, property, 81 A.L.R.3d 717.

Validity and application of regulation prohibiting licensed real-estate broker from negotiating sale or lease with owner known to have exclusive listing agreement with another broker, 17 A.L.R.4th 763.

Real-estate broker's rights and liabilities as affected by failure to disclose agreement to loan purchase money to purchaser, 17 A.L.R.4th 788.

Revocation or suspension of real estate broker's license for conduct not connected with business as broker, 22 A.L.R.4th 136.

Real estate broker's or agent's misrepresentation to, or failure to inform, vendor regarding value of vendor's real property, 33 A.L.R.4th 944.

Grounds for revocation or suspension of license of real-estate broker or salesperson, 7 A.L.R.5th 474.

12 C.J.S. Brokers §§ 16, 19, 21 to 24.

61-29-13. Provision for hearing before suspension or revocation of license.

The commission shall, before suspending or revoking any license, set the matter down for a hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978].

History: 1953 Comp., § 67-24-30, enacted by Laws 1959, ch. 226, § 12; 1979, ch. 94, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.

53 C.J.S. Licenses § 50 et seq.

61-29-14. Repealed.

Repeals. — Laws 2003, ch. 22, § 7 repealed 61-29-14 NMSA 1978, as enacted by Laws 1959, ch. 226, § 13, relating to nonresident brokers, effective June 20, 2003. For

provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

61-29-15. Maintenance of list of licensees.

The commission shall maintain a list of the names and addresses of all licensees licensed by it under the provisions of Chapter 61, Article 29 NMSA 1978, and of all persons whose license has been suspended or revoked within that year, together with such other information relative to the enforcement of the provisions of Chapter 61, Article 29 NMSA 1978 as it may deem of interest to the public. The commission shall also maintain a statement of all funds received and a statement of all disbursements, and copies of the statements shall be mailed by the commission to any person in this state upon request.

History: 1953 Comp., § 67-24-32, enacted by Laws 1959, ch. 226, § 14; 2001, ch. 163, § 10.

The 2001 amendment, effective July 1, 2001, substituted "Maintenance" for "Publication" in the section heading; substituted "The commission shall maintain a list"

for "The commission shall, at least annually, publish"; and substituted "maintain" for "prepare" in the last sentence.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 C.J.S. Brokers § 14.

61-29-16. Suit by qualifying or associate broker.

No action for the collection of a commission or compensation earned by any person as a qualifying broker or an associate broker required to be licensed under the provisions of Chapter 61, Article 29 NMSA 1978 shall be maintained in the courts of the state unless such person was a duly licensed qualifying broker or associate broker at the time the alleged cause of action arose. In any event, suit against a member of the public as distinguished from any person licensed under Chapter 61, Article 29 NMSA 1978 shall be maintained only in the name of the qualifying broker.

History: 1953 Comp., § 67-24-33, enacted by Laws 1959, ch. 226, § 15. 2005, ch. 35, § 18.

The 2005 amendment, effective January 1, 2006, provides that no action to collect a commission or compensation by a person as a qualifying broker or an associate broker shall be maintained unless the person was licensed as a qualifying broker or an associate broker on the date cause of action arose and requires that suits against a member of the public be in the name of the qualifying broker.

ANNOTATIONS

Section upholds legislative intent that brokers be licensed. — A person who simply brings two parties together in a real estate transaction must be licensed to sue for the recovery of a commission. To rule otherwise would be to violate the clear intent of the legislature in requiring that real estate "brokers" or salespersons be licensed. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Texas broker barred from collecting a commission. — Where plaintiff, who was a licensed real estate broker in Texas, knew that an unlisted ranch was for sale; plaintiff and defendants, who were licensed real estate brokers in New Mexico, orally agreed to work together as co-brokers in the sale of the ranch and to share the commission on the purchase price; plaintiff and defendants never entered into a transaction-specific written agreement to share the commission; and plaintiff brought the sellers and the buyers together with the assistance of defendants, plaintiff was barred from collecting a real estate commission, because plaintiff was acting as a broker without a valid New Mexico broker's license or a written, foreign broker's agreement in violation of Section 61-29-16 NMSA 1978. *PC Carter Co. v. Miller*, 2011-NMCA-052, 149 N.M. 660, 253 P.3d 950.

Meaning of "arose". — The word "arose" used in this statute is used in its usual and ordinary meaning and denotes past completed action, not past continuing action. *Lakeview Invs., Inc. v. Alamogordo Lake Vill., Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

Person claiming commission must prove license. — The statute casts no burden upon a defendant to prove absence of a license but does place upon one claiming a real estate commission the burden of establishing that he was duly licensed when the alleged cause of action arose and the inadvertent statement relative to the burden of proof in *Southwest Motel Brokers, Inc. v. Alamo Hotels, Inc.*, 1963-NMSC-091, 72 N.M. 227, 382 P.2d 707, overruled by *Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Finding that plaintiff held license required. — A judgment for recovery of a real estate commission without a finding that the plaintiff held either a broker's or salesman's license when the cause of action arose is erroneous. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Section prohibits action in quantum meruit to recover value of services rendered by person who is required to have license, in the absence of such license. *Bank of N.M. v. Freedom Homes, Inc.*, 1980-NMCA-064, 94 N.M. 532, 612 P.2d 1343.

An unlicensed real estate broker or salesperson cannot recover a commission in an action in quantum meruit. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Suit by corporation. — Since an action to recover a real estate commission may only be brought in the name of the licensed broker, evidence showing corporation may be entitled to a license, and that an officer thereof had a license, was insufficient to enable corporation to bring suit in its own name. *Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Action for breach of contract. — This section did not prevent real estate broker from maintaining action for breach of contract where broker was not licensed at time he entered into exclusive sales representation agreement with defendant but became licensed prior to breach of this agreement by defendant. *Lakeview Invs., Inc. v. Alamogordo Lake Vill., Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

In estimating the commission on an exchange of real estate the actual and not the trade value of the property received in exchange should be taken as the basis, unless the contract of employment provides for some other basis, such as a fixed and agreed valuation of the property given in exchange. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Allegation of licensing effective against motion to dismiss. — Allegation that the party seeking relief was licensed at the time the work or service was performed satisfies the requirements of this section as against a motion to dismiss. *Lakeview Invs., Inc. v. Alamogordo Lake Vill., Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

In order to satisfy the requirements of this section as against a motion to dismiss, the party seeking relief must allege that he was licensed at the time the work or service was performed. *Bosque Farms Home Ctr., Inc. v. Tabet Lumber Co.*, 1988-NMSC-027, 107 N.M. 115, 753 P.2d 894.

Parol evidence rule is fully applicable together with all the exceptions recognized in connection with any other writing in connection with written listing

agreements. Parol evidence may not be received when its purpose and effect is to contradict, vary, modify or add to a written agreement, but is generally admissible to supply terms not in the written contract, to explain ambiguities in the written agreement, or to show fraud, misrepresentations or mistake. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Compensation rule distinguished from that in fraud. — The rule applicable in determining the right of an agent to recover compensation from his principal differs from that which is applied when fraud is claimed as between a vendor and purchaser. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 217 to 222.

Failure, when refusing offer to purchase land, to state, as ground therefor, broker's failure to introduce or disclose name of customer, as affecting right to assert such ground in defense of broker's action for compensation, 156 A.L.R. 605.

Rights and obligations of real estate broker employed to sell property as affected by option to purchase for himself, 164 A.L.R. 1378.

Real estate broker's right to commission on sale, exchange or lease of property listed without statement of price or other terms, 169 A.L.R. 380.

Want of license as affecting broker's recovery of compensation for services, 169 A.L.R. 767.

Condemnation of property as affecting broker's right to compensation, 170 A.L.R. 1422.

Subagent, right of broker as against employer to commission on sale by, 3 A.L.R.2d 532.

Relative rights and liabilities of vendor and his broker to down payment or earnest money forfeited by vendee for default under real estate contract, 9 A.L.R.2d 495.

Real estate broker's right to commission where purchaser refuses to go through with the executory contract because of reckless misrepresentation made to him by broker respecting property, 9 A.L.R.2d 504.

Right of real estate broker to commission where customer repudiates or fails to complete contract or promise which is oral or not specifically enforceable, 12 A.L.R.2d 1410.

Effect of statement of real estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, so as to bar claim for commission, 17 A.L.R.2d 904.

What deviation in prospective vendee's proposal from vendor's terms precludes broker from recovering commission for producing a ready, willing, and able vendee, 18 A.L.R.2d 376.

Broker's right to commission on sales consummated after termination of employment, 27 A.L.R.2d 1348.

Nondisclosure or misrepresentation of sale price of other property as affecting broker's rights as against principal, 32 A.L.R.2d 728.

Liability of broker to prospective purchaser for refund of deposit or earnest money where contract fails because of defects in vendor's title, 38 A.L.R.2d 1382.

Broker's right to commission where owner sells property to broker's customer at less than stipulated price, 46 A.L.R.2d 848.

Conveyance of real property to mortgagee or lien holder as constituting "sale or exchange" rendering owner liable for commissions to broker having exclusive agency or exclusive right to sell, 46 A.L.R.2d 1116.

Broker's right to commission for selling part of property, 47 A.L.R.2d 680.

Liability of vendor's real-estate broker or agent to purchaser or prospect for misrepresenting or concealing offer or acceptance, 55 A.L.R.2d 342.

Broker's return of deposit to purchaser as waiver of right to demand commission from seller, 69 A.L.R.2d 1244.

Commission on sale rejected by principal because of buyer's fraud or misrepresentation, 79 A.L.R.2d 1055.

Licensed real estate broker's right to compensation as affected by lack of license on the part of partners, co-adventurers, employees, or other associates, 8 A.L.R.3d 523.

Real estate broker's right to compensation as affected by failure or refusal of principal's spouse to join in contract of sale, 10 A.L.R.3d 665.

Broker's right to commission from principal upon procuring third party taking an option, 32 A.L.R.3d 321.

Right of real estate broker to commission where listing contract is for sale of property and it is subsequently leased to one with whom broker had negotiated, 42 A.L.R.3d 1430.

Construction of provision in real estate broker's listing contract that broker shall receive commission on sale after expiration of listing period to one with whom broker has "negotiated" during listing period, 51 A.L.R.3d 1149.

Real estate broker's right to commission for procuring lessee where lease terminates before contemplated term, 54 A.L.R.3d 1171.

Necessity of having real estate broker's license in order to recover commission as affected by fact that business sold includes real property, 82 A.L.R.3d 1139.

Right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale, 12 A.L.R.4th 1083.

Real estate broker's right to recover commission from seller where sale fails because of seller's failure to deliver good title - modern cases, 28 A.L.R.4th 1007.

Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser, 34 A.L.R.4th 191.

What constitutes financial ability to perform within rule entitling broker to commission for producing ready, willing, and able purchaser of real property, 87 A.L.R.4th 11.

12 C.J.S. Brokers §§ 132 to 135.

61-29-16.1. Foreign brokers; consent to service; referral fees.

A. A foreign broker may act in the capacity of a qualifying or associate broker with respect to commercial real estate located in New Mexico; provided that prior to performing any of the real estate activities of a qualifying or associate broker, the foreign broker enters into a transaction-specific written agreement with a New Mexico qualifying broker that includes, at a minimum:

- (1) a description of the parties, the commercial real estate and any additional information necessary to identify the specific transaction governed by the agreement;
- (2) the terms of compensation between the foreign broker and the New Mexico qualifying broker;
- (3) the effective date and definitive termination date of the agreement; and

- (4) a statement that the foreign broker agrees to:
- (a) cooperate fully with the New Mexico qualifying broker and all associate brokers designated by the New Mexico qualifying broker;
 - (b) except for the foreign broker's interaction with the foreign broker's client, conduct all contact with parties, including the general public and other brokers, in association with the New Mexico qualifying broker or associate broker designated by the New Mexico qualifying broker;
 - (c) conduct all marketing and solicitations for business in the name of the New Mexico qualifying broker;
 - (d) timely furnish to the New Mexico qualifying broker copies of all documents related to the transaction that are required by the laws of New Mexico to be retained by its licensees, including without limitation, agency disclosure, offers, counteroffers, purchase and sale contracts, leases and closing statements;
 - (e) comply with and be bound by and subject to New Mexico law and the regulations of the commission; and
 - (f) submit to the jurisdiction of the courts of New Mexico with respect to the transaction and any and all claims related thereto by service of process upon the secretary of state of New Mexico and upon the appropriate official of the state, province or nation of the foreign broker's real estate licensure.

B. When a New Mexico associate broker or qualifying broker makes a referral to or receives a referral from a foreign broker for the purpose of receiving a fee, commission or any other consideration, the qualifying broker of the New Mexico brokerage and the foreign broker shall execute a written, transaction-specific referral agreement at the time of the referral.

History: Laws 2005, ch. 35, § 15; 2011, ch. 85, § 7; 2013, ch. 167, § 7; 2014, ch. 27, § 2.

The 2014 amendment, effective May 21, 2014, provided for foreign brokers acting as qualifying or associate brokers with respect to commercial real estate; in the catchline, deleted "nonresident" and added "foreign"; in Subsection A, deleted the entire former language of the subsection which provided for service of process on associate brokers and qualifying brokers who had license application addresses outside New Mexico; added a new Subsection A; in Subsection B, after "a referral from a", deleted "nonresident" and added "foreign", and after

"brokerage and the", deleted "nonresident" and added "foreign".

The 2013 amendment, effective June 14, 2013, required transaction-specific referral agreements at the time of referral; in the title, deleted "Foreign brokers; nonresident licensees", and added "Nonresident brokers; consent to service; referral fees"; deleted former Subsection A, which required nonresident brokers to enter into transaction-specific contracts with New Mexico brokers prior to commencing real estate activity; and added Subsection B.

61-29-16.2. Nonresident licensees; consent to service.

A. A nonresident licensee shall file with the commission an irrevocable consent that lawsuits and actions may be commenced against the associate broker or qualifying broker in the proper court of any county of New Mexico in which a cause of action may arise or in which the plaintiff may reside, by service on the commission of any process or pleadings authorized by the laws of New Mexico, the consent stipulating and agreeing that such service of process or pleadings on the commission is as valid and binding as if personal service had been made upon the associate broker or qualifying broker in New Mexico.

B. Service of process or pleadings shall be served in duplicate upon the commission; one shall be filed in the office of the commission and the other immediately forwarded by certified mail to the main office of the associate broker or qualifying broker against whom the process or pleadings are directed.

History: Laws 2014, ch. 27, § 4.

Effective dates. — Laws 2014, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

61-29-17. Penalty; injunctive relief.

A. Any person who engages in the business or acts in the capacity of an associate broker or a qualifying broker within New Mexico without a license issued by the commission or pursuant to

Section 61-29-16.1 NMSA 1978 is guilty of a fourth degree felony. Any person who violates any other provision of Chapter 61, Article 29 NMSA 1978 is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or imprisonment for not more than six months, or both.

B. In the event any person has engaged or proposes to engage in any act or practice violative of a provision of Chapter 61, Article 29 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur may, upon application of the commission, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

C. In any action brought under Subsection B of this section, if the court finds that a person is engaged or has willfully engaged in any act or practice violative of a provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or is occurring may, upon petition to the court, recover on behalf of the state a civil penalty not exceeding five thousand dollars (\$5,000) per violation and attorney fees and costs.

History: 1953 Comp., § 67-24-34, enacted by Laws 1965, ch. 304, § 8; 1993, ch. 192, § 2; 2011, ch. 85, § 8; 2013, ch. 167, § 8; 2014, ch. 27, § 3.

Repeals and reenactments. — Laws 1965, ch. 304, § 8, repeals 67-24-34, 1953 Comp., relating to penalties for violations by brokers, and enacts the above section.

The 2014 amendment, effective May 21, 2014, provided that foreign brokers conducting business in New Mexico are not in violation of Article 61, Chapter 29 NMSA 1978 if they have entered into transaction-specific agreements; and in Subsection A, in the first sentence, after "license issued by the commission", added "or pursuant to Section 61-29-16.1 NMSA 1978".

The 2013 amendment, effective June 14, 2013, revised the penalties for violations of the licensure requirements; in Subsection A, in the first sentence, after "Any person who", deleted "violates any provision of Chapter 61, Article 29 NMSA 1978 is guilty of a fourth degree felony and shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for a definite term of eighteen months, or both" and added the remainder of the sentence and added the second sentence; in Subsection B, after "occurred or will occur", deleted "shall" and added

"may"; and in Subsection B, after "occurred or is occurring", deleted "shall" and added "may".

The 2011 amendment, effective July 1 2011, changed a violation from a misdemeanor offense to a fourth degree felony and changed the fine from five hundred dollars to five thousand dollars and the term of imprisonment from a term of not more than six months to a definite term of eighteen months.

The 1993 amendment, effective June 18, 1993, substituted "Chapter 61, Article 29 NMSA 1978" for "Sections 67-24-19 through 67-24-35 New Mexico Statutes Annotated, 1953 Compilation" in two places in Subsection A and in Subsection B; and added Subsection C.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 72, 73.

Right to private action under state statutes or regulations governing real estate brokers or salesmen, 28 A.L.R.4th 199.

53 C.J.S. Licenses § 82.

61-29-17.1. Recompiled.

Recompilations. — Former 61-29-17.1 NMSA 1978, relating to disciplinary action by the New Mexico real estate commission concerning time share projects, enacted

by Laws 1986, ch. 97, § 14, has been recompiled as 47-11-11.2 NMSA 1978.

61-29-17.2. Unlicensed activity; civil penalty; administrative costs.

The commission may impose a civil penalty on any person who is found, through a court or administrative proceeding, to have acted in violation of Chapter 61, Article 29 NMSA 1978 in an amount not to exceed one thousand dollars (\$1,000) for each violation or, if the commission can so determine, in the amount of the total commissions received by the person for the unlicensed activity. The commission may assess administrative costs for any investigation and administrative or other proceedings against any such person. Any money collected by the commission under the provisions of this section shall be deposited into the real estate recovery fund.

History: Laws 2001, ch. 163, § 11; 2011, ch. 85, § 9.

The 2011 amendment, effective July 1 2011, permitted the commission to impose a civil penalty in the amount of

the total commissions received for an unlicensed activity and required civil penalties to be deposited into the real estate recovery fund.

61-29-18. Interpretation of act.

Nothing contained in Chapter 61, Article 29 NMSA 1978 shall affect the power of cities and villages to tax, license and regulate qualifying brokers or associate brokers. The requirements hereof shall be in addition to the requirements of an existing or future ordinance of any city or village so taxing, licensing or regulating qualifying brokers or associate brokers.

History: 1953 Comp., § 67-24-35, enacted by Laws 1959, ch. 226, § 18; 2005, ch. 35, § 17.

The 2005 amendment, effective January 1, 2006, provides that nothing in Chapter 61, Article 29 NMSA 1978 shall affect the power of municipalities to license and regulate qualifying brokers and associate brokers.

Severability. — Laws 1959, ch. 226, § 19, provides for the severability of the act if any part or application thereof is held invalid.

Meaning of "this act". — See same catchline in notes to 61-29-7 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 6 to 8.
53 C.J.S. Licenses §§ 10, 11.

61-29-19. Repealed.

Repeals. — Laws 2011, ch. 85, § 11 repealed 61-29-19 NMSA 1978, as enacted by Laws 1978, ch. 203, § 2, relating to the termination of agency life, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

Laws 2011, ch. 30, § 8, effective June 17, 2011, also amended 61-29-19 NMSA 1978 by changing the termination, operation and repeal dates. The section was set out as repealed by Laws 2011, ch. 85, § 11. See 12-1-8 NMSA 1978.

61-29-19.1. Real estate education and training fund created; purpose; appropriation.

A. The "real estate education and training fund" is created in the state treasury. The fund shall consist of an initial transfer of the balance in the real estate recovery fund as provided in Subsection C of this section; legislative appropriations to the fund; fees charged by the commission for approval of real estate education sponsors, courses and instructors; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

B. The fund shall be administered by the commission, and money in the fund is subject to appropriation by the legislature to the commission to improve real estate education and to train real estate instructors. The commission shall promulgate rules specifying the manner in which the fund shall be administered.

C. Notwithstanding the provisions of Sections 61-29-21 and 61-29-22 NMSA 1978, on July 1, 2005, the balance in excess of two hundred fifty thousand dollars (\$250,000) in the real estate recovery fund shall be transferred to the real estate education and training fund.

History: Laws 2005, ch. 35, § 20.

Effective dates. — Laws 2005, ch. 35, § 21 makes the act effective January 1, 2006.

61-29-20. Short title.

Sections 61-29-20 through 61-29-29 NMSA 1978 may be cited as the "Real Estate Recovery Fund Act".

History: Laws 1980, ch. 82, § 1; 2022, ch. 39, § 98.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, after "Section" changed "1 through 10 of this act" to "61-29-20 through 61-29-29 NMSA 1978".

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 C.J.S. Brokers §§ 11, 12.

61-29-21. Fund created.

There is created in the state treasury a fund which shall be known as the "real estate recovery fund" to be administered by the real estate commission in accordance with the provisions of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978]. All money received by the real estate commission pursuant to the Real Estate Recovery Fund Act shall be credited to the real estate recovery fund. The state treasurer may invest money in the real estate recovery fund in United States bonds or treasury certificates under such rules and regulations as may be prescribed by the state board of finance, provided that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to the Real Estate Recovery Fund Act. All interest earned from such investments shall be credited to the fund to pay any future judgments only.

History: Laws 1980, ch. 82, § 2.

61-29-22. Additional fees.

A. The commission shall collect an annual fee not in excess of ten dollars (\$10.00) from each real estate licensee prior to the issuance of the next license.

B. The commission shall collect from each successful applicant for an original real estate license, in addition to the original license fee, a fee not in excess of ten dollars (\$10.00).

C. The additional fees provided by this section shall be credited to the real estate recovery fund. The amount of the real estate recovery fund shall be maintained at one hundred fifty thousand dollars (\$150,000). If the real estate recovery fund falls below this amount, the commission shall have authority to adjust the annual amount of additional fees to be charged licensees or to draw on the real estate commission fund in order to maintain the fund level as required in this section. If on July 1 of any year, the balance in the fund exceeds four hundred thousand dollars (\$400,000), the amount over four hundred thousand dollars (\$400,000) shall be transferred to the real estate commission fund to be used for the purposes of carrying out the provisions of Chapter 61, Article 29 NMSA 1978.

History: Laws 1980, ch. 82, § 3; 1987, ch. 90, § 6; 1993, ch. 253, § 4; 2003, ch. 22, § 6; 2011, ch. 85, § 10.

The 2011 amendment, effective July 1 2011, lowered the minimum balance of the real estate recovery fund from two hundred fifty thousand dollars to one hundred fifty thousand dollars.

The 2003 amendment, effective June 20, 2003, deleted "On and after the effective date of the Real Estate Recovery Fund Act" from the beginning of Subsections A and B; and added the last sentence of Subsection C.

The 1993 amendment, effective June 18, 1993, purported to amend this section but made no change.

61-29-23. Judgment against qualifying or associate broker; petition; requirements; recovery limitations.

A. When an aggrieved person claims a pecuniary loss caused by a state-licensed qualifying broker or associate broker based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker, involving a transaction for which a qualifying broker's or an associate broker's license is required and which arose out of or during the course of a transaction involving the sale, lease, exchange or other disposition of real estate or property management, where the cause of action arose on or after July 1, 1980, that person may, within two years after obtaining a final judgment based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker from a court of competent jurisdiction, file a verified petition with the commission for recovery pursuant to the Real Estate Recovery Fund Act. The real estate recovery fund reimburses the claimant for unpaid actual damages included in the judgment, but not more than fifty thousand dollars (\$50,000) per judgment regardless of the number of persons aggrieved or parcels of real estate involved in the transaction. The aggregate amount recoverable by all

claimants for losses against any one licensee during one calendar year shall not exceed one hundred thousand dollars (\$100,000).

B. A copy of the verified petition with the judgment attached shall be served upon the commission by United States postal service certified return receipt or in the manner provided by law for service of a civil summons.

C. The commission shall serve the petition and notice of hearing on the licensee in substantially the same manner as required pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

D. The commission shall conduct a hearing on the petition after service of the petition upon the commission and the licensee. At the hearing, the petitioner shall be required to show that the petitioner:

(1) is not the spouse of the judgment debtor, the personal representative of the spouse or related to the third degree of consanguinity or affinity to the licensee whose conduct is alleged to have caused the loss;

(2) has complied with all the requirements of the Real Estate Recovery Fund Act; and

(3) has a judgment that is not covered by a bond, insurance, surety agreement or indemnity agreement.

E. At the hearing, the licensee shall be permitted to raise all affirmative defenses.

History: Laws 1980, ch. 82, § 4; 1987, ch. 90, § 7; 2005, ch. 35, § 18; 2021, ch. 106, § 2.

The 2021 amendment, effective July 1, 2021, clarified the procedures for recovery pursuant to the Real Estate Recovery Fund Act, and increased recovery limits; in Subsection A, after "disposition of real estate", added "or property management", after "qualifying broker or associate broker", deleted "and the termination of all proceedings, including appeals in connection with the judgment, file a verified petition with the commission for payment", after "from", added "a court of competent jurisdiction, file a verified petition with the commission for recovery pursuant to the Real Estate Recovery Fund Act", after "The real estate recovery fund", added "reimburses the claimant", after "for", added "unpaid", after "included in the judgment", deleted "and unpaid", after "but not more than", deleted "ten thousand dollars (\$10,000)", and added "fifty thousand dollars (\$50,000)", after "licensee", added "during one calendar year", and after "shall not exceed", changed "thirty thousand dollars (\$30,000)" to "one hundred thousand dollars (\$100,000)"; in Subsection B, after "A copy of the", added "verified", after "petition", added "with the judgment attached", and after "upon the commission",

added "by the United States postal service certified return receipt or"; added new Subsection C and redesignated former Subsection C as Subsection D; in Subsection D, after "upon the commission", added "and the licensee", deleted former Paragraphs C(3) through C(5) and redesignated former Paragraph C(6) as Paragraph D(3), in Paragraph D(3), deleted subsection designation "(a)" and deleted former Subparagraphs C(6)(b) and C(6)(c); and added Subsection E.

The 2005 amendment, effective January 1, 2006, provides that a person who has obtained a judgment against a qualifying broker or an associate broker under this section may petition the real estate commission for payment from the real estate recover fund.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser, 34 A.L.R.4th 191.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 A.L.R.4th 546.

61-29-24. Commission; compromise.

Upon receipt of a petition as required by Section 61-29-23 NMSA 1978, the commission shall conduct a hearing in substantially the same manner and with the same authority as set forth in the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978]. The commission may compromise a claim based upon the application of a petitioner.

History: Laws 1980, ch. 82, § 5; 1987, ch. 90, § 8; 2021, ch. 106, § 3.

The 2021 amendment, effective July 1, 2021, revised procedures related to hearings on petitions for recovery pursuant to the Real Estate Recovery Fund Act; in the section heading, after "Commission", deleted "review"; after

"the same manner", added "and with the same authority", and after "Uniform Licensing Act", deleted "including Sections 61-1-9 through 61-1-11 NMSA 1978. Review of the commission's decision shall be in the manner provided by Section 61-1-20 NMSA 1978".

61-29-25. Commission finding.

If the commission makes a specific finding of the items enumerated in Section 61-29-23 NMSA 1978 and determines that a claim should be levied against the real estate recovery fund, the

commission shall enter an order requiring payment from the fund of that portion of the petitioner's claim that is payable from the fund pursuant to the provisions of and in accordance with the limitations contained in Section 61-29-23 NMSA 1978.

History: Laws 1980, ch. 82, § 6; 1987, ch. 90, § 9.

61-29-26. Insufficient funds.

If at any time the money deposited in the real estate recovery fund is insufficient to satisfy any authorized claim for payment from the fund, the real estate commission shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims in the order that they were originally filed, together with accumulated interest at the rate of eight percent per year.

History: Laws 1980, ch. 82, § 7.

61-29-27. Subrogation.

When the commission makes any payment from the real estate recovery fund to a judgment creditor, the commission shall be subrogated to all rights of the judgment creditor for the amounts paid out of the fund and any amount and interest so recovered by the commission shall be deposited in the fund. The commission may, pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978], revoke, suspend or refuse to renew the license of any qualifying broker or associate broker for whom payment from the fund has been made in accordance with the provisions of the Real Estate Recovery Fund Act [61-29-20 NMSA 1978]. Further, the commission may refuse to issue or renew the license of any person for whom payment from the real estate recovery fund has been made, until that person reimburses the fund for all payments made on that person's behalf.

History: Laws 1980, ch. 82, § 8; 1987, ch. 90, § 10; 2005, ch. 35, § 19.

The 2005 amendment, effective January 1, 2006, provides that of the real estate commission pays a judgment

against a qualifying broker or an associate broker from the real estate recovery fund, the real estate commission may revoke, suspend or refuse to renew the license of the qualifying or associate broker.

61-29-28. Waiver.

The failure of any person to comply with all of the provisions of the Real Estate Recovery Fund Act [61-29-20 NMSA 1978] shall constitute a waiver of any rights pursuant to that act.

History: Laws 1980, ch. 82, § 9.

61-29-29. Disciplinary action not limited.

Nothing contained in the Real Estate Recovery Fund Act [61-29-20 NMSA 1978] shall limit the authority of the real estate commission to take disciplinary action against a licensee for a violation of any of the provisions of Section 61-29-12 NMSA 1978 or of the rules and regulations of the real estate commission, nor shall the repayment in full of all obligations to the real estate recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of Section 61-29-12 NMSA 1978 or the rules and regulations promulgated by the commission.

History: Laws 1980, ch. 82, § 10.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Grounds for revocation or suspension of license of real estate broker or salesperson, 7 A.L.R.5th 474.

ARTICLE 29A**Thanatopractice**

(Recompiled.)

61-29A-1 to 61-29A-25. Recompiled.

Recompilations. — Former Chapter 61, Article 29A NMSA 1978, relating to Thanatopractice License Law,

was recompiled as Chapter 61, Article 32 NMSA 1978 by the compiler in 1990 to alphabetize the article headings.

ARTICLE 30**Real Estate Appraisers**

Sec.

61-30-1. Short title. (Repealed effective July 1, 2024.)

61-30-2. Purpose and legislative intent. (Repealed effective July 1, 2024.)

61-30-3. Definitions. (Repealed effective July 1, 2024.)

61-30-4. Administration; enforcement. (Repealed effective July 1, 2024.)

61-30-5. Real estate appraisers board created. (Repealed effective July 1, 2024.)

61-30-5.1. Temporary provision. (Repealed effective July 1, 2024.)

61-30-6. Repealed.

61-30-7. Board; powers; duties. (Repealed effective July 1, 2024.)

61-30-8. Board; organization; meetings. (Repealed effective July 1, 2024.)

61-30-9. Reimbursement and expenses. (Repealed effective July 1, 2024.)

61-30-10. Registration, license or certification required; exceptions. (Repealed effective July 1, 2024.)

61-30-10.1. Qualification for real estate appraiser trainee. (Repealed effective July 1, 2024.)

61-30-11. Qualifications for license. (Repealed effective July 1, 2024.)

61-30-12. Qualifications for certified residential and general real estate appraisers. (Repealed effective July 1, 2024.)

61-30-13. Application for registration, license or certificate; examination. (Repealed effective July 1, 2024.)

Sec.

61-30-14. Issuance and renewal of registration, licenses and certificates. (Repealed effective July 1, 2024.)

61-30-15. Refusal, suspension or revocation of registration, license or certificate. (Repealed effective July 1, 2024.)

61-30-15.1. Criminal history background checks. (Repealed effective July 1, 2024.)

61-30-16. Standards of professional appraisal practice; certificate of good standing. (Repealed effective July 1, 2024.)

61-30-17. Fees. (Repealed effective July 1, 2024.)

61-30-18. Appraiser fund created; disposition; method of payment. (Repealed effective July 1, 2024.)

61-30-19. Continuing education. (Repealed effective July 1, 2024.)

61-30-20. Nonresident applicants; reciprocity. (Repealed effective July 1, 2024.)

61-30-21. Temporary practice. (Repealed effective July 1, 2024.)

61-30-22. Civil and criminal penalties; injunctive relief. (Repealed effective July 1, 2024.)

61-30-23. Repealed.

61-30-24. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

Recompilations. — Former Chapter 61, Article 30 NMSA 1978, relating to Utility Operators Certification

Act, was recompiled as Chapter 61, Article 33 NMSA 1978 by the compiler in 1990 to alphabetize the article heading.

61-30-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 30 NMSA 1978 may be cited as the "Real Estate Appraisers Act".

History: Laws 1990, ch. 75, § 1; 1992, ch. 54, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 1992 amendment, effective May 20, 1992, substituted "Chapter 61, Article 30 NMSA 1978" for "Sections 1 through 23 and Section 28 of this Act".

61-30-2. Purpose and legislative intent. (Repealed effective July 1, 2024.)

A. The purpose of the Real Estate Appraisers Act [61-30-1 NMSA 1978] is to provide a comprehensive body of law for the effective regulation and active supervision of the business of developing

and communicating real estate appraisals in response to the federal Financial Institutions Examination Council Act of 1978, 12 U.S.C. 3301, et seq., as amended by Title XI, Real Estate Appraisal Reform Amendments, 12 U.S.C. 3331 through 3351.

B. The legislature intends that persons developing and communicating real estate appraisals be regulated by the state for the protection of those persons relying upon real estate appraisals.

History: Laws 1990, ch. 75, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

61-30-3. Definitions. (Repealed effective July 1, 2024.)

As used in the Real Estate Appraisers Act:

A. "appraisal" or "real estate appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in or aspects of identified real estate or real property, for or in expectation of compensation, and shall include the following:

(1) a valuation, analysis, opinion or conclusion prepared by a real estate appraiser that estimates the value of identified real estate or real property;

(2) an analysis or study of real estate or real property other than estimating value; and

(3) written or oral appraisals that are subject to appropriate review for compliance with the uniform standards of professional appraisal practice. The work file for an oral appraisal report shall be subject to appropriate review for compliance with the uniform standards of professional appraisal practice;

B. "appraisal assignment" means an engagement for which an appraiser is employed or retained to act or would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased appraisal;

C. "appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987 and to which reference is made in the federal real estate appraisal reform amendments;

D. "appraisal management company" means any external third party that oversees a network or panel of certified or licensed appraisers to:

(1) recruit, select and retain appraisers;

(2) contract with appraisers to perform appraisal assignments;

(3) manage the process of having an appraisal performed; or

(4) review and verify the work of appraisers;

E. "appraisal report" means any communication, written or oral, of an appraisal regardless of title or designation and all other reports communicating an appraisal;

F. "appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work;

G. "appraisal subcommittee" means the entity within the federal financial institutions examination council that monitors the requirements established by the states for appraisers and appraisal management companies;

H. "board" means the real estate appraisers board;

I. "certified appraisal" or "certified appraisal report" means an appraisal or appraisal report given or signed and certified as such by a state certified real estate appraiser and shall include an indication of which type of certification is held and shall be deemed to represent to the public that it meets the appraisal standards defined in the Real Estate Appraisers Act;

J. "federal real estate appraisal reform amendments" means the Federal Financial Institutions Examination Council Act of 1978, as amended by Title 11, Real Estate Appraisal Reform Amendments;

K. "general certificate" or "general certification" means a certificate or certification for appraisals of all types of real estate issued pursuant to the provisions of the Real Estate Appraisers Act and the federal real estate appraisal reform amendments;

L. "real estate" or "real property" means a leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests that by custom,

usage or law pass with a conveyance of land, though not described in a contract of sale or instrument of conveyance, and includes parcels with or without upper and lower boundaries and spaces that may be filled with air;

M. "real estate appraiser" means any person who engages in real estate appraisal activity in expectation of compensation;

N. "real estate appraiser trainee" means a registered real estate appraiser who meets or exceeds the minimum qualification requirements of the appraiser qualifications board of the appraisal foundation for real estate appraisal trainees and as defined by board rule and who are subject to direct supervision by a supervisory appraiser;

O. "residential certificate" or "residential certification" means a certificate or certification, limited to appraisals of residential real estate or residential real property without regard to the complexity of the transaction, issued pursuant to the provisions of the Real Estate Appraisers Act and as provided under the terms of the federal real estate appraisal reform amendments;

P. "residential real estate" or "residential real property" means real estate designed and suited or intended for use and occupancy by one to four families, including use and occupancy of manufactured housing;

Q. "specialized services" means those services that do not fall within the definition of an appraisal assignment and may include specialized financing or market analyses and feasibility studies that may incorporate estimates of value or analyses, opinions or conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling and real estate tax counseling; provided that the person rendering such services would not be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased appraisal or real estate appraisal, regardless of the intention of the client and that person;

R. "state certified appraisal" means any appraisal that is identified as a state certified appraisal report or is in any way described as being prepared by a state certified real estate appraiser;

S. "state certified real estate appraiser" means a person who has satisfied the requirements for state licensing in New Mexico pursuant to the minimum criteria established by the appraiser qualifications board of the appraisal foundation for licensing of real estate appraisers;

T. "state licensed residential real estate appraiser" means a person who has satisfied the requirements for state licensing in New Mexico pursuant to the minimum criteria established by the appraiser qualifications board of the appraisal foundation and the New Mexico real estate appraisers board for licensing of real estate appraisers;

U. "supervisory appraiser" means a state certified real estate appraiser responsible for the direct supervision of real estate appraiser trainees who have satisfied the requirements for supervisory appraiser pursuant to the minimum criteria established by the appraiser qualifications board of the appraisal foundation; and

V. "uniform standards of professional appraisal practice" means the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

History: Laws 1990, ch. 75, § 3; 1992, ch. 54, § 2; 1993, ch. 269, § 1; 2003, ch. 328, § 1; 2014, ch. 33, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

Cross references. — For the federal Real Estate Appraisal Reform Amendments, see 12 U.S.C. §§ 3331 through 3352.

The 2014 amendment, effective May 21, 2014, added definitions to provide for compliance with federal law, appraisal management companies, trainees, an appraisal subcommittee, and uniform standards of professional appraisal practice; in Subsection A, added Paragraph (2); added Subsections D, F and G; added Subsection N; in Subsection S, after "means a person who", deleted "holds a current, valid general certificate or a current, valid residential certificate issued pursuant to the provisions of the Real Estate Appraisers Act" and added the remainder of the sentence; in Subsection T, after "state licensed", added

"residential" and after "means a person who", deleted "holds a current, valid license issued pursuant to the provisions of the Real Estate Appraisers Act; and" and added the remainder of the sentence; deleted former Subsection Q, which defined "state apprentice real estate appraiser", and added Subsections U and V.

The 2003 amendment, effective July 1, 2003, deleted "or real estate appraisal" following "rendering an unbiased appraisal" at the end of Subsection B; deleted "or real estate appraisal" following "of an appraisal" near the middle of Subsection D; in Subsection G deleted "12 U.S.C. 3301, et seq.," following "Examination Council Act of 1978," near the middle, and deleted ", 12 U.S.C. 3331 through 3351" at the end; and substituted "apprentice" for "registered" following "state" near the beginning of Subsection Q.

The 1993 amendment, effective June 18, 1993, deleted former Subsection G, which defined "commission",

redesignating the remaining subsections accordingly; and deleted "limited to appraisals of residential real estate involving non-complex transactions of a transaction value of less than one million dollars (\$1,000,000) and complex transactions of a transaction value of less than two hundred fifty thousand dollars (\$250,000) as provided under the terms of the federal Real Estate Appraisal Reform

Amendments, which license is" after "valid license" in Subsection P.

The 1992 amendment, effective May 20, 1992, inserted "without regard to the complexity of the transaction" in Subsection L; added the limitation language in Subsection Q; added Subsection R; and made stylistic changes.

61-30-4. Administration; enforcement. (Repealed effective July 1, 2024.)

A. The board shall administer and enforce the Real Estate Appraisers Act.

B. It is unlawful for a person to engage in the business, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of, or act as, a real estate appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser without a license issued by the board. A person who engages in the business or acts in the capacity of a real estate appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser has submitted to the jurisdiction of the state and to the administrative jurisdiction of the board, notwithstanding any other provisions or statutes governing all professional and occupational licenses.

History: Laws 1990, ch. 75, § 4; 1993, ch. 269, § 2; 2003, ch. 328, § 2; 2014, ch. 33, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for appraiser trainees; and in Subsection B, in the first sentence, after "or act as, a", deleted "state apprentice", after "real estate appraiser", added "trainee, a", and

after "state licensed", added "residential", and in the second sentence, after "in the capacity of a", deleted "state apprentice", after "real estate appraiser", added "trainee, a", and after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, inserted the Subsection A designation and added Subsection B.

The 1993 amendment, effective June 18, 1993, deleted "commission and" before "board".

61-30-5. Real estate appraisers board created. (Repealed effective July 1, 2024.)

A. There is created a "real estate appraisers board" consisting of seven members appointed by the governor. The board is administratively attached to the regulation and licensing department.

B. There shall be four real estate appraiser members of the board who shall be licensed or certified. Membership in a professional appraisal organization or association shall not be a prerequisite to serve on the board. No more than two real estate appraiser members shall be from any one licensed or certified category.

C. Board members shall be appointed to five-year terms and shall serve until a successor is appointed and qualified. Real estate appraiser members may be appointed for no more than two consecutive five-year terms.

D. No more than two members shall be from any one county within New Mexico, and at least one real estate appraiser member shall be from each congressional district.

E. One member of the board shall represent lenders or their assignees engaged in the business of lending funds secured by mortgages or in the business of appraisal management. Two members shall be appointed to represent the public. The public members shall not have been real estate appraisers or engaged in the business of real estate appraisals or have any financial interest, direct or indirect, in real estate appraisal or any real-estate-related business.

F. Vacancies on the board shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy.

G. The board is administratively attached to the regulation and licensing department, and, pursuant to Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the appraisal subcommittee may monitor the board for the purposes of determining whether the board:

(1) has policies, practices, funding, staffing and procedures that are consistent with the requirements of the appraisal subcommittee and pursuant to Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

- (2) processes complaints and completes investigations in a reasonable time period;
- (3) appropriately disciplines sanctioned appraisers and appraisal management companies;
- (4) maintains an effective regulatory program; and
- (5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the appraisal subcommittee.

H. The appraisal subcommittee may impose sanctions against the board if it fails to have an effective appraiser regulatory program.

History: Laws 1990, ch. 75, § 5; 1992, ch. 54, § 3; 1993, ch. 269, § 3; 1999, ch. 283, § 1; 2003, ch. 328, § 3; 2003, ch. 408, § 32; 2011, ch. 19, § 1; 2014, ch. 33, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, prescribed duties for the appraisal subcommittee; provided for compliance with federal law; in Subsection G, after "regulation and licensing department", added the remainder of the sentence; in Subsection G, added Paragraphs (1) through (5); and added Subsection H.

The 2011 amendment, effective July 1, 2011, in Subsection A, provided that members of the board will be appointed by the governor; and in Subsection E, provided that one member who is not a public member or a real estate appraiser may be appointed to represent the business of appraisal management.

Temporary provisions. — Laws 2011, ch. 19, § 2 provided that current members of the real estate board shall continue to serve in their current term of office. One member who is a representative of an appraisal management company shall be appointed for an initial three-year term. Thereafter, appointment to that position shall be for a five-year term.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department," following the first sentence of Subsection A.

The 1999 amendment, effective June 18, 1999, rewrote this section to the extent that a detailed comparison is impracticable.

The 1993 amendment, effective June 18, 1993, in Subsection A, increased the number of members from seven to nine; deleted former Subsections B through G, relating to the qualifications and terms of the members and the composition of the board after the initial terms; inserted present Subsections B through E; and redesignated former Subsection H as present Subsection F.

The 1992 amendment, effective May 20, 1992, in Subsection A, substituted "consisting of seven members" for "consisting initially of seven members, for a period of three years after appointment, and thereafter five members"; in Subsection B, inserted "real estate" in the first sentence and added the last two sentences; and, in Subsection D, inserted "state" at the second occurrence of the word in the first sentence.

61-30-5.1. Temporary provision. (Repealed effective July 1, 2024.)

As the terms of current members of the real estate appraisers board expire, the governor shall appoint or reappoint members in a way that provides for future terms to be staggered.

History: Laws 1999, ch. 283, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

61-30-6. Repealed.

Repeals. — Laws 1993, ch. 269, § 22 repealed 61-30-6 NMSA 1978, as amended by Laws 1992, ch. 54, § 4, concerning the powers and duties of the board, effective

June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on NMSource.com.

61-30-7. Board; powers; duties. (Repealed effective July 1, 2024.)

The board shall:

- A. promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to implement the provisions of the Real Estate Appraisers Act;
- B. establish educational programs and research projects related to the appraisal of real estate;
- C. establish the administrative procedures for processing applications and issuing registrations, licenses and certificates to persons who qualify to be real estate appraiser trainees, state licensed residential real estate appraisers or state certified real estate appraisers;
- D. receive, review and approve applications for real estate appraiser trainees, state licensed residential real estate appraisers and each category of state certified real estate appraisers;
- E. define the extent and type of educational experience, appraisal experience and equivalent experience that will meet the requirements for registration, licensing and certification pursuant to

the Real Estate Appraisers Act after considering generally recognized appraisal practices and set minimum requirements for education and experience;

F. provide for continuing education programs for the renewal of registrations, licenses and certification that will meet the requirements provided in the Real Estate Appraisers Act and set minimum requirements;

G. adopt standards to define the education programs that will meet the requirements of the Real Estate Appraisers Act and that will encourage conducting programs at various locations throughout the state;

H. adopt standards for the development and communication of real estate appraisals provided in the Real Estate Appraisers Act and adopt rules explaining and interpreting the standards after considering generally recognized appraisal practices;

I. adopt a code of professional responsibility for real estate appraiser trainees, state licensed residential real estate appraisers and state certified real estate appraisers;

J. comply with annual reporting requirements and other requirements set forth in the federal real estate appraisal reform amendments;

K. collect and transmit annual registry fees from persons who perform or seek to perform appraisals in federally related transactions and from an appraisal management company that either has registered with the board or operates as a subsidiary of a federally regulated financial institution;

L. maintain a registry of the names and addresses of the persons who hold current registrations, licenses and certificates issued under the Real Estate Appraisers Act;

M. establish procedures for disciplinary action in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] against any applicant or holder of a registration, license or certificate for violations of the Real Estate Appraisers Act and any rules adopted pursuant to provisions of that act;

N. register and supervise appraisal management companies and submit additional information about the appraisal management company to the appraisal subcommittee's national registry;

O. recognize appraiser certifications and licenses from states whose appraisal program is found to be consistent with Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as determined by the appraisal subcommittee; and

P. perform such other functions and duties as may be necessary to carry out the provisions of the Real Estate Appraisers Act.

History: Laws 1990, ch. 75, § 7; 1992, ch. 54, § 5; 1993, ch. 269, § 4; 1999, ch. 283, § 2; 2003, ch. 328, § 4; 2014, ch. 33, § 4; 2022, ch. 39, § 99.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the real estate appraisers board is required to follow the provisions of the State Rules Act when promulgating rules; and in Subsection A, deleted "adopt" and added "promulgate", and after "rules", deleted "necessary" and added "in accordance with the State Rules Act".

The 2014 amendment, effective May 21, 2014, provided for appraiser trainees, appraiser management companies, and compliance with federal law; in Subsection C, after "who qualify to be", deleted "state apprentices", after "real estate", deleted "appraisers" and added "appraiser trainees", and after "state licensed", added "residential"; in Subsection D, after "approve applications for", deleted "state apprentice", after "real estate", deleted "appraisers" and added "appraiser trainees", after "state licensed", added "residential", and after "state certified real estate appraisers", deleted language which provided for the preparation and grading of examinations for state licensed and certified real estate appraisers; in Subsection E, after "licensing and certification", deleted "under" and added "pursuant to"; in Subsection I, after "professional responsibility for", deleted "state apprentice", after "real estate", deleted "appraisers" and added "appraiser trainees", and after "state licensed", added "residential"; and added Subsections K, N and O.

The 2003 amendment, effective July 1, 2003, in Subsection C, substituted "state apprentice real estate appraisers, state" for "registered" following "who qualify to be" near the middle and substituted "real estate appraisers or state" for "and" preceding "certified real estate appraisers" near the end; in Subsection D, substituted "apprentice" for "registered" preceding "real estate appraisers" near the beginning and inserted "state" preceding "certified real estate appraisers" near the middle; in Subsection I, substituted "apprentice real estate appraisers, state" for "registered" following "responsibility for state" near the middle, inserted "real estate appraisers" following "licensed" near the middle and inserted "state" preceding "certified real estate" near the end; and substituted "persons" for "individuals" following "addresses of the" near the middle of Subsection K.

The 1999 amendment, effective June 18, 1999, deleted "and for conducting disciplinary proceedings pursuant to the provisions of the Real Estate Appraisers Act" at the end of Subsection C; added the language beginning "and set minimum requirements" at the end of Subsections E and F; inserted "in accordance with the Uniform Licensing Act" in Subsection L; and made stylistic changes.

The 1993 amendment, effective June 18, 1993, substituted "Board" for "Commission" in the catchline; rewrote the introductory language; inserted "licensed or" in Subsection D; and deleted former Subsection M, which read: "provide administrative assistance to the board by providing such facilities, equipment, supplies and personnel as are necessary to enable the board to perform its duties

under the Real Estate Appraisers Act; and", redesignating former Subsection N as present Subsection M and making a related grammatical change.

The 1992 amendment, effective May 20, 1992, made a section reference substitution in the introductory language; inserted references to registration in Subsections C, E, F, I, K, and L; inserted "state registered real estate

appraisers" in Subsection D; deleted "and will preclude members of the board from an ownership interest in any organization or company authorized to conduct approved courses or from conducting those programs while a member of the board" from the end of Subsection G; inserted "real estate" in Subsection I; and made stylistic changes.

61-30-8. Board; organization; meetings. (Repealed effective July 1, 2024.)

A. The board shall organize by electing a chair and vice chair from among its members annually. A majority of the board shall constitute a quorum and may exercise all powers and duties established by the provisions of the Real Estate Appraisers Act.

B. The board shall keep a record of its proceedings, a register of persons registered, licensed or certified as real estate appraiser trainees, state licensed residential real estate appraisers or state certified real estate appraisers, showing the name and places of business of each, and shall retain all records and applications submitted to the board pursuant to the Real Estate Appraisers Act.

C. The board shall meet not less frequently than once each calendar quarter at such place as may be designated by the board, and special meetings may be held on five days' written notice to each of the members by the chair. At least annually, the board shall meet in each of the congressional districts.

History: Laws 1990, ch. 75, § 8; 1992, ch. 54, § 6; 1993, ch. 269, § 5; 2003, ch. 328, § 5; 2014, ch. 33, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for appraiser trainees; in Subsection A, after "by electing a", deleted "chairperson" and added "chair and", and after "vice", deleted "chairperson and secretary" and added "chair; in Subsection B, after "licensed or certified as", deleted "state apprentice", after "real estate", deleted "appraisers" and added "appraiser trainees", and after "state licensed", added "residential"; and in Subsection C, in the first sentence, after "members by the", deleted "chairperson" and added "chair".

The 2003 amendment, effective July 1, 2003, added "annually" following "among its members" at the end of the first sentence of Subsection A; and in Subsection B, substituted "apprentice real estate appraisers, state" for "registered" following "certified as state" near the middle, inserted "real estate appraisers" following "licensed" near the middle, and inserted "state" preceding "certified real estate" near the middle.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" near the end of Subsection B.

The 1992 amendment, effective May 20, 1992, inserted "registered" in two places in Subsection B.

61-30-9. Reimbursement and expenses. (Repealed effective July 1, 2024.)

The board may appoint such committees of the board as may be necessary. A member of the board or a committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other perquisite, compensation or allowance. Compensation for investigative contractors or consultants [and] any necessary supplies and equipment shall be paid from the appraiser fund.

History: Laws 1990, ch. 75, § 9; 1993, ch. 269, § 6; 2003, ch. 328, § 6; 2003, ch. 408, § 33.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

2003 Multiple Amendments. — Laws 2003, ch. 328, § 6 and Laws 2003, ch. 408, § 33 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2003, ch. 408, § 33, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2003, ch. 328, § 6 and Laws 2003, ch. 408, § 33 are described below. To view the session laws in their entirety, see the 2003 session laws on NMSOneSource.com.

Laws 2003, ch. 408, § 33, effective July 1, 2003, deleted "and employ such persons to assist the board" following "committees of the board" near the beginning of the section; and deleted "employees and" following "Compensation for" near the end of the section.

Laws 2003, ch. 328, § 6, effective July 1, 2003, deleted "and employ such persons to assist the board" following "committees of the board" near the middle of the first sentence; and inserted "investigative contractors or consultant" following "Compensation for employees," near the beginning of the third sentence.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" and deleted "and commission" following "board", in the first sentence.

**61-30-10. Registration, license or certification required; exceptions.
(Repealed effective July 1, 2024.)**

A. It is unlawful for any person in this state to engage or attempt to engage in the business of developing or communicating real estate appraisals or appraisal reports without first registering as a real estate appraiser trainee or obtaining a license or certificate from the board under the provisions of the Real Estate Appraisers Act.

B. No person, unless certified by the board as a state certified real estate appraiser under a general certification or residential certification, shall:

(1) assume or use any title, designation or abbreviation likely to create the impression of a state certified real estate appraiser;

(2) use the term "state certified" to describe or refer to any appraisal or evaluation of real estate prepared by the person;

(3) assume or use any title, designation or abbreviation likely to create the impression of certification as a state certified real estate appraiser firm, partnership, corporation or group; or

(4) assume or use any title, designation or abbreviation likely to create the impression of certification under a general certificate or describe or refer to any appraisal or evaluation of nonresidential real estate by the term "state certified" if the preparer's certification is limited to residential real estate.

C. A real estate appraiser trainee is only authorized to prepare appraisals of all types of real estate or real property under direct supervision of the supervisory appraiser holding a residential or general certificate; provided that such person does not assume or use any title, designation or abbreviation likely to create the impression of certification as a state certified real estate appraiser or licensure as a state licensed residential real estate appraiser.

D. The scope of practice for:

(1) a real estate appraiser trainee is appraisal of those properties that the supervisory appraiser is permitted by the supervisory appraiser's current credential and that the supervisory appraiser is qualified to appraise. All real estate appraiser trainees must comply with the competency rule of the uniform standards of professional appraisal practice;

(2) a state licensed residential real estate appraiser is appraisal of non-complex, one-to-four residential units having a transaction value of less than one million dollars (\$1,000,000) and complex one-to-four residential units having a transaction value less than two hundred fifty thousand dollars (\$250,000). "Complex one-to-four family residential property appraisal" means one in which the property to be appraised, the form of ownership or the market conditions are typical. The state licensed residential real estate appraiser must comply with the competency rule of the uniform standards of professional appraisal practice;

(3) a state certified residential real estate appraiser is appraisal of one-to-four residential units without regard to value or complexity. This classification includes the appraisal of vacant or unimproved land that is utilized for one-to-four family purposes or for which the highest and best use is for one-to-four family purposes, and the classification does not include the appraisal of subdivisions for which a development analysis or appraisal is necessary. All state certified residential real estate appraisers must comply with the competency rule of the uniform standards of professional appraisal practice; and

(4) a state certified general real estate appraiser is appraisal of all types of property. All state certified general real estate appraisers must comply with the competency rule of the uniform standards of professional appraisal practice.

E. The requirement of registration, licensing or certification shall not apply to a qualifying or associate broker, as defined under the provisions of Chapter 61, Article 29 NMSA 1978, who gives an opinion of the price of real estate for the purpose of marketing, selling, purchasing, leasing or exchanging such real estate or any interest therein or for the purpose of providing a financial institution with a collateral assessment of any real estate in which the financial institution has an existing or potential security interest. The opinion of the price shall not be referred to or construed as an appraisal or appraisal report and shall not be used as the primary basis to determine the value of real estate for the purpose of loan origination.

F. The requirement of registration, licensing or certification shall not apply to real estate appraisers of the property tax division of the taxation and revenue department, to a county assessor or to the county assessor's employees, who as part of their duties are required to engage in real estate appraisal activity as a county assessor or on behalf of the county assessor and no additional compensation fee or other consideration is expected or charged for such appraisal activity, other than such compensation as is provided by law.

G. The prohibition of Subsection A of this section does not apply to persons whose real estate appraisal activities are limited to the appraisal of interests in minerals, including oil, natural gas, liquid hydrocarbons or carbon dioxide, and property held or used in connection with mineral property, if that person is authorized in the person's state of residence to practice and is actually engaged in the practice of the profession of engineering or geology.

H. The process of analyzing, without altering, an appraisal report, except appraisal reviews as defined by the uniform standards of professional appraisal practice, that is part of a request for mortgage credit is considered a specialized service as defined in Subsection S of Section 61-30-3 NMSA 1978 and is exempt from the requirements of registration, licensing or certification.

History: Laws 1990, ch. 75, § 10; 1991, ch. 183, § 1; 1992, ch. 54, § 7; 1993, ch. 269, § 7; 2003, ch. 328, § 7; 2013, ch. 111, § 1; 2014, ch. 33, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

Cross references. — For the federal Financial Institutions Reform, Recovery and Enforcement Act, see 12 U.S.C. § 1461 et seq.

The 2014 amendment, effective May 21, 2014, provided for the scope of practice of trainees and appraisers; provided for the exemption of qualifying and associate brokers from registration, licensing and certification; in Subsection A, after "first registering as", deleted "an apprentice" and added "a real estate appraiser trainee"; in Subsection C, at the beginning of the sentence, after "A", deleted "state apprentice", after "real estate appraiser", deleted "who is registered but does not hold a license or certificate" and added "trainee", after "appraiser trainee is", added "only", after "real property", deleted "provided that such appraisals are not described or referred to as being prepared by a 'state certified real estate appraiser'" and added "under direct supervision of the supervisory appraiser", and after "general certificate", deleted "or by 'state licensed real estate appraiser'; and", and after "state licensed", added "residential"; deleted former Subsection D, which authorized the holder of a license or residential certificate to prepare appraisals of nonresidential real estate subject to specified conditions; deleted Subsection E, which required real estate appraisers who perform in federally related transactions to meet the conditions for licensing; deleted former Subsection F, which exempted qualifying or associate brokers who give opinions of the price of real estate to financial institutions from the requirement of registration, licensing or certification; added Subsections D and E; and in Subsection H, after "an appraisal report", added "except appraisal reviews as defined by the uniform standards of professional appraisal practice".

The 2013 amendment, effective June 14, 2013, provided an exemption for real estate brokers who give an

opinion of the price of real estate for purposes of marketing, selling, purchasing, leasing or exchanging the real estate or for the purpose of providing a financial institution with a collateral assessment of real estate; deleted former Subsection F, which provided an exemption for real estate brokers who give an opinion of the price of real estate for purposes of listing, marketing, sale, lease or exchange of real estate, or conducting a market analysis, or rendering specialized services; and added a new Subsection F.

The 2003 amendment, effective July 1, 2003, inserted "as an apprentice" following "without first registering" near the middle of Subsection A; in Subsection C, substituted "apprentice" for "registered" following "A state" near the beginning, and inserted "is registered but" following "appraiser who" near the beginning; substituted "a real estate" for "an" following "Recovery and Enforcement Act" near the middle of Subsection E; inserted "real estate" following "shall not apply to" near the beginning of Subsection G; and in Subsection I, substituted "as defined in" for "under" following "specialized service" near the middle, and deleted "of the Real Estate Appraisers Act" following "Section 61-30-3 NMSA 1978" near the middle.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in Subsection A and in the introductory language of Subsection B; and added present Subsections E and I, redesignating former Subsections E through G as present Subsections F through H.

The 1992 amendment, effective May 20, 1992, inserted references to registration in the catchline and Subsections A, E, and F; rewrote Subsection C; and, in Subsection D, substituted "holder of a license or residential certificate is authorized to prepare" for "holder of a residential certificate shall be deemed to be licensed so as to permit the holder of the certificate to prepare" and inserted "by a general certified appraiser".

The 1991 amendment, effective June 14, 1991, added Subsection G and made minor stylistic changes in Subsections A and F.

61-30-10.1. Qualification for real estate appraiser trainee. (Repealed effective July 1, 2024.)

A. Registration as a real estate appraiser trainee shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for registration as a real estate appraiser trainee shall have reached the age of majority.

C. Each applicant for registration as a real estate appraiser trainee shall meet the education requirements as established for the real estate appraiser trainee classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

D. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency.

History: 1978 Comp., § 61-30-10.1, enacted by Laws 1992, ch. 54, § 8; 1993, ch. 269, § 8; 1999, ch. 283, § 3; 2003, ch. 328, § 8; 2014, ch. 33, § 7; 2021, ch. 70, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed legal residency of the United States as a requirement for registration as a real estate appraiser trainee; and in Subsection B, after "trainee shall", deleted "be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and".

The 2014 amendment, effective May 21, 2014, provided qualifications for appraiser trainees; in the catchline, after "qualification for", deleted "state apprentice", and after "real estate", deleted "appraisers" and added "appraiser trainee"; in Subsection A, after "Registration as a", deleted "state apprentice", and after "real estate appraiser", added "trainee"; in Subsection B, after "registration as a", deleted "state apprentice", and after "real estate appraiser", added "trainee"; and in Subsection C, after "registration as a", deleted "state apprentice", after "real estate appraiser", added "trainee", after "trainee shall", deleted "have" and added "meet", and after "established for

the", deleted "apprentice" and added "real estate appraiser trainee".

The 2003 amendment, effective July 1, 2003, substituted "state apprentice real estate appraisers" for "registration" in the section heading; inserted "as a state apprentice real estate appraiser" following "Registration" near the beginning of Subsection A; inserted "as a state apprentice real estate appraiser" following "registration" near the beginning of Subsection B; substituted "apprentice" for "registered" following "registration as a state" near the middle of Subsection C; deleted former Paragraph C(1), concerning hours of instruction; and substituted "the" for "(2) additional experience and" at the beginning of former Subsection C(2) and deleted "registered" preceding "apprentice" near the middle of this paragraph.

The 1999 amendment, effective June 18, 1999, substituted "seventy-five classroom hours" for "sixty classroom hours" in Subsection C(1), and rewrote Subsection C(2) which formerly read "such equivalent education in an activity closely related to or associated with real estate appraisal as the board determines by regulation".

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in Subsections A, C(2), and D.

61-30-11. Qualifications for license. (Repealed effective July 1, 2024.)

A. Licenses shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a license as a state licensed residential real estate appraiser shall have reached the age of majority.

C. Each applicant for a license as a state licensed residential real estate appraiser shall have additional experience and education requirements as established for the licensed classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

D. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency.

E. Persons who do not meet the qualifications for licensure are not qualified for appraisal assignments involving federally related transactions.

History: Laws 1990, ch. 75, § 11; 1992, ch. 54, § 9; 1993, ch. 269, § 9; 1999, ch. 283, § 4; 2003, ch. 328, § 9; 2014, ch. 33, § 8; 2021, ch. 70, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed legal residency of the United States as a requirement for licensure as a state licensed residential real estate appraiser; and in Subsection B, after "real estate appraiser shall", deleted "be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and".

The 2014 amendment, effective May 21, 2014, provided for residential real estate appraisers; in Subsection B, after "state licensed", added "residential"; and in Subsection C, after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, inserted "as a state licensed real estate appraiser" following "applicant for a license" near the beginning of Subsection B;

added "additional experience and education requirements as established for the licensed classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act" at the end of Subsection C; deleted former Paragraphs C(1), C(2) and C(3), concerning experience, instruction and other equivalent educational activity; and substituted "Persons" for "Individuals" at the beginning of Subsection E.

The 1999 amendment, effective June 18, 1999, substituted "seventy-five classroom hours" for "sixty classroom hours" in Subsection C(2), and deleted the former first two sentences of Subsection E, which read "Holders of licenses issued before the effective date of this section shall have until October 1, 1993 to comply with the current requirements of this section. Should the requirements not be met by October 1, 1993, the license shall be surrendered to the board and a registration shall be issued therefor."

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in Subsections A and D; deleted "two years of experience with" from the beginning of Paragraph (1) of Subsection C; and added Subsection E.

The 1992 amendment, effective May 20, 1992, in Subsection B, deleted "a bona fide resident of New Mexico"

following "United States" and made a section reference substitution; in Subsection C, added present Paragraph (1), redesignated former Paragraphs (1) and (2) as present Paragraphs (2) and (3); and deleted "approved by the board" following "real estate" in present Paragraph (2).

61-30-12. Qualifications for certified residential and general real estate appraisers. (Repealed effective July 1, 2024.)

A. Certified classification shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a state certified residential or general real estate appraiser classification shall have reached the age of majority.

C. Each applicant for a residential certificate as a state certified real estate appraiser shall have performed actively as a real estate appraiser and shall have additional experience and education requirements as established for the residential certification classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

D. Each applicant for a general certificate as a state certified real estate appraiser shall have performed actively as a real estate appraiser and have additional experience and education requirements as established for the general certification classification issued by the appraiser qualifications board of the appraisal foundation and adopted pursuant to the Real Estate Appraisers Act.

E. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency.

History: Laws 1990, ch. 75, § 12; 1992, ch. 54, § 10; 1993, ch. 269, § 10; 1999, ch. 283, § 5; 2003, ch. 328, § 10; 2014, ch. 33, § 9; 2021, ch. 70, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed legal residency of the United States as a qualification for certified classification as a state certified residential or general real estate appraiser; and in Subsection B, after "classification shall", deleted "be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and".

The 2014 amendment, effective May 21, 2014, provided qualifications for certified residential and general real estate appraisers; in the catchline, after "Qualifications for", deleted "certificate", and added "certified residential and general real estate appraisers"; in Subsection A, deleted "Certificates" and added "Certified classification"; and in Subsection B, after "Each applicant for a", deleted "certificate as a", after "state certified", deleted "residential or general", and after "real estate appraiser", added "classification".

The 2003 amendment, effective July 1, 2003, inserted "as a state certified real estate appraiser" following "for a certificate" near the beginning of Subsection B; added present Subsection C and redesignated former Subsection C as present Subsection D; added "additional experience and education requirements as established for the general certification classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act" at the end of present Subsection D; and deleted former Paragraphs C(1) through C(3) and former Subsection D, concerning required education and experience.

The 1999 amendment, effective June 18, 1999, substituted "thirty months" for "two years" in Subsection C(1), substituted "sixty-five classroom hours" for "fifty classroom hours" in Subsection C(2), substituted "two thousand five hundred hours" for "two thousand hours" in Subsection D(1), substituted "one hundred five classroom hours" for "ninety classroom hours" and "ninety classroom hour" for "seventy-five classroom hour" in Subsection D(2), and deleted former Subsection F, which required that holders of residential certificates issued before the effective date of this section shall have until July 1, 1993 to obtain additional education.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in Subsections A and E, and deleted "and commission" after "board" in the second sentence of Subsection F.

The 1992 amendment, effective May 20, 1992, in Subsection B, deleted "a bona fide resident of New Mexico" following "United States" and made a section reference substitution; in Subsection C, rewrote Paragraph (1), added the language beginning "which may include" to the end of Paragraph (2), and, in Paragraph (3), substituted "such additional experience and education requirements as may be established" for "the minimum criteria" and added "and adopted by regulation pursuant to the Real Estate Appraisers Act" to the end; in Subsection D, rewrote Paragraph (1), in Paragraph (2), substituted "ninety classroom hours" for "sixty classroom hours" near the beginning and added "which may include the seventy-five classroom hour requirement for the state licensed real estate appraiser" to the end, and rewrote Paragraph (3); and added Subsection F.

61-30-13. Application for registration, license or certificate; examination. (Repealed effective July 1, 2024.)

A. All applications for registrations, licenses or certificates shall be made to the board in writing, either in person or electronically, shall specify whether registration or a license or a certificate

is being applied for by the applicant and, if a certificate, the classification of the certificate being applied for by the applicant and shall contain such data and information as may be required by the board.

B. Each applicant for a license or a certificate shall demonstrate, by successfully passing a written examination, prepared by or under the supervision of the board, that the applicant possesses, consistent with licensure or the certification sought, the following:

- (1) an appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing and economic concepts applicable to real estate;
- (2) a basic understanding of real estate law;
- (3) an adequate knowledge of theory and techniques of real estate appraisal;
- (4) an understanding of the principles of land economics, real estate appraisal processes and problems likely to be encountered in the gathering, interpreting and processing of data in carrying out appraisal disciplines;
- (5) an understanding of the standards for the development and communication of real estate appraisals as provided in the Real Estate Appraisers Act;
- (6) knowledge of theories of depreciation, cost estimating, methods of capitalization and the mathematics of real estate appraisal that are appropriate for the classification of a certificate applied for by the applicant;
- (7) knowledge of other principles and procedures as may be appropriate for the respective classification; and
- (8) an understanding of the types of misconduct for which disciplinary proceedings may be initiated against a real estate appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser as set forth in the Real Estate Appraisers Act.

C. An applicant for a license or a certificate who fails to successfully complete the written examination may apply for a reexamination for a license or certificate upon compliance with such conditions as set forth in the rules adopted by the board pursuant to the provisions of the Real Estate Appraisers Act.

History: Laws 1990, ch. 75, § 13; 1992, ch. 54, § 11; 1993, ch. 269, § 11; 2003, ch. 328, § 11; 2014, ch. 33, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, permitted applications to be made in person or electronically; eliminated the requirement that examinations be given at least four times each year; in Subsection A, after "to the board in writing", added "either in person or electronically"; in Subsection B, in Paragraph (8), after "initiated against a", deleted "state apprentice", after "real estate appraiser", added "trainee, a", and after "state licensed", added "residential"; and deleted former Subsection C, which required that the examination be given at least four times each year and in each congressional district and that notice of passing or failing be given not later than forty-five days after the examination.

The 2003 amendment, effective July 1, 2003, in Subsection B(8), substituted "apprentice real estate appraiser, state" for "registered" following "against a state", near

the middle, inserted "real estate appraiser" following "licensed" near the middle and inserted "state" preceding "certified real estate" near the middle; substituted "forty-five" for "thirty" preceding "day following" near the end of Subsection C; and deleted "and regulations" following "in the rules" near the end of Subsection D.

The 1993 amendment, effective June 18, 1993, rewrote the catchline; substituted "registrations" for "registration" and "registration or a license or a" for "a license or" in Subsection A; substituted "board" for "commission" at the end of Subsection A, in the last sentence of Subsection C, and in Subsection D; deleted "commission, upon the advice and recommendation of the board and after consultation with the" before "board" and inserted "licensure or" in Subsection B; and made a stylistic change in Subsection D.

The 1992 amendment, effective May 20, 1992, inserted "registration" near the beginning of Subsection A; inserted references to a license in Subsections B and D; and inserted "registered, licensed or" in Subsection B(8).

61-30-14. Issuance and renewal of registration, licenses and certificates. (Repealed effective July 1, 2024.)

A. The board shall issue to each qualified applicant evidence of registration, a license or a certificate in a form and size prescribed by the board.

B. The board in its discretion may renew registrations, licenses or certificates for periods of one, two or three years for the purpose of coordinating continuing education requirements with registration, license or certificate renewal requirements.

C. Each registration, license or certificate holder shall submit proof of compliance with continuing education requirements and the renewal fee.

D. Each application for renewal shall include payment of a registry fee set by the federal financial institutions examination council. The registry fee shall be transmitted by the board to the federal financial institutions examination council.

E. The board shall certify renewal of each registration, license or certificate in the absence of any reason or condition that might warrant the refusal of the renewal of a registration, license or certificate.

F. In the event that a registration, license or certificate holder fails to properly apply for renewal of the registration, license or certificate within the thirty days immediately following the registration, license or certificate renewal date of any given year, the registration, license or certificate shall expire thirty days following the renewal date.

G. The board may renew an expired registration upon application, payment of the current annual renewal fee, submission of proof of compliance with continuing education requirements and payment of a reinstatement fee in the amount not to exceed two hundred dollars (\$200), in addition to any other fee permitted under the Real Estate Appraisers Act.

H. The board may renew an expired license or certificate upon application, payment of the current annual renewal fee, submission of proof of compliance with continuing education requirements and payment of the reinstatement fee, in addition to any other fee permitted under the Real Estate Appraisers Act; provided that the board may, in the board's discretion, treat the former certificate holder as a new applicant and further may require reexamination as a condition to reissuance of a certificate.

I. If during a period of one year from the date a registration, license or certificate expires, the registration, license or certificate holder is either absent from this state on active duty military service or is suffering from an illness or injury of such severity that the person is physically or mentally incapable of renewal of the registration, license or certificate, payment of the reinstatement fee and, in the case of a license or certificate holder, reexamination shall not be required by the board if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the board for renewal. A copy of the person's military orders or a certificate of the applicant's physician shall accompany the application.

J. The board may adopt additional requirements by rule for the issuance or renewal of registrations, licenses or certificates to maintain or upgrade real estate appraiser qualifications at a level no less than the recommendations of the appraiser qualifications board of the appraisal foundation or the requirements of the appraisal subcommittee.

History: Laws 1990, ch. 75, § 14; 1992, ch. 54, § 12; 1993, ch. 269, § 12; 1999, ch. 283, § 6; 2003, ch. 328, § 12; 2014, ch. 33, § 11.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, changed provisions relating to payment of federal registry fees; and in Subsection D, at the beginning of the sentence, deleted "At the election of eligible holders of a registration, license, certificate who perform or seek to perform appraisals in federally related transactions under the federal real estate appraisal reform amendments", and deleted the former second sentence, which required the board to give notice of whether appraisers paid the federal registry fees and were eligible to perform in federally related transactions.

The 1999 amendment, effective June 18, 1999, substituted the language beginning "renewed every three years" for "subject to annual renewal on the last day of the registration, license or certificate holder's month of birth" at the end of Subsection B; assigned the Subsection C designation, and added the last sentence in that subsection; redesignated former Subsections C to H as Subsections D to I; substituted "triennially" for "annually" in Subsection

D; and substituted "recommendations of the appraiser qualifications board of the appraisal foundation or the requirements of the appraisal subcommittee" for "appraiser qualifications board recommendations or appraisal subcommittee requirements" in Subsection I.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in two places in Subsections A and F, in the last sentence of Subsection B, in Subsections C and E, and in two places in the first sentence of Subsection G, "or" for "and" preceding "certificate" in the second sentence of Subsection B, "registration" for "registered appraiser or" in Subsection D and the first sentence of Subsection G, "following" for "preceding" and "thirty days following" for "on" in Subsection D, and "in the board's" for "upon the advice and recommendation of the board, in its" in Subsection F; and added Subsection H.

The 1992 amendment, effective May 20, 1992, inserted "registration" or references to registration throughout the section; inserted "license or" in the third sentence in Subsection B, near the beginning of Subsection F, and near the middle of the first sentence in Subsection G; inserted "registered appraiser or" near the beginning of Subsections D and G; and made stylistic changes.

61-30-15. Refusal, suspension or revocation of registration, license or certificate. (Repealed effective July 1, 2024.)

A. The board, consistent with Section 61-30-7 NMSA 1978, shall refuse to issue or renew a registration, license or certificate or shall suspend or revoke a registration, license or certificate at any time when the applicant, real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser, in performing or attempting to perform any of the actions set forth in the Real Estate Appraisers Act, is determined by the board to have:

(1) procured or attempted to procure a registration, license or certificate by knowingly making a false statement or submitting false information or through any form of fraud or misrepresentation;

(2) refused to provide complete information in response to a question in an application for registration, a license or certificate or failed to meet the minimum qualifications established by the Real Estate Appraisers Act;

(3) paid money, other than as provided for in the Real Estate Appraisers Act, to any member or employee of the board to procure registration, a license or a certificate;

(4) been convicted of a crime that is substantially related to the qualifications, functions and duties of the person developing real estate appraisals and communicating real estate appraisals to others;

(5) committed an act involving dishonesty, fraud or misrepresentation or by omission engaged in a dishonest or fraudulent act or misrepresentation with the intent to substantially benefit the registration, license or certificate holder or another person or with the intent to substantially injure another person;

(6) willfully disregarded or violated any of the provisions of the Real Estate Appraisers Act or the rules of the board adopted pursuant to that act;

(7) accepted an appraisal assignment when the employment itself is contingent upon the real estate appraiser reporting a predetermined analysis or opinion or where the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion or valuation reached or upon the consequences resulting from the appraisal assignment; provided that a contingent fee agreement is permitted for the rendering of special services not constituting an appraisal assignment and the acceptance of a contingent fee is clearly and prominently stated on the written appraisal report;

(8) suffered the entry of a final civil judgment on the grounds of fraud, misrepresentation or deceit in the making of an appraisal; provided that the real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser shall be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment; or

(9) committed any other conduct that is related to dealings as a real estate appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser and that constitutes or demonstrates bad faith, untrustworthiness, impropriety, fraud, dishonesty or any unlawful act.

B. The board, consistent with Section 61-30-7 NMSA 1978, shall refuse to issue or renew a registration, license or certificate and shall suspend or revoke a registration, license or certificate at any time when the board determines that the applicant or real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser, in the performance of real estate appraisal work, has:

(1) repeatedly failed to observe one or more of the standards for the development or communication of real estate appraisals set forth in the rules adopted pursuant to the Real Estate Appraisers Act;

(2) repeatedly failed or refused, without good cause, to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

(3) repeatedly been negligent or incompetent in developing an appraisal, in preparing an appraisal report or in communicating an appraisal; or

(4) violated the confidential nature of records to which the real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser gained access through employment or engagement as such an appraiser.

C. The action of the board relating to the issuance, suspension or revocation of any registration, license or certificate shall be governed by the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978]; provided that the time limitations set forth in the Uniform Licensing Act shall not apply to the processing of administrative complaints filed with the board, which shall be governed by federal statute, regulation or policy. The board shall participate in any hearings required or conducted by the board pursuant to the provisions of the Uniform Licensing Act.

D. The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted under the Real Estate Appraisers Act.

E. Nothing in the Real Estate Appraisers Act shall be construed to preclude any other remedies otherwise available under common law or statutes of this state.

History: Laws 1990, ch. 75, § 15; 1992, ch. 54, § 13; 1993, ch. 269, § 13; 2003, ch. 328, § 13; 2011, ch. 77, § 1; 2014, ch. 33, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for appraiser trainees; in Subsection A, in the introductory paragraph, after "time when the applicant", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential"; in Subsection A, in Paragraph (8), after "provided that the", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential"; in Subsection A, in Paragraph (9), after "dealings as a", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential"; in Subsection B, in the introductory paragraph, after "the applicant or", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential"; and in Subsection B, in Paragraph (4), after "records to which the", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential".

The 2011 amendment, effective June 17, 2011, in Subsection C, requires the board to process administrative complaints in accordance with federal law.

The 2003 amendment, effective July 1, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in two places in the introductory language of Subsections A and B, in Subsection A(6), and in the second sentence of Subsection C; deleted "upon the advice and recommendation of the board and after consultation with the board and" preceding "consistent with" and made a stylistic change in the introductory language of Subsections A and B; substituted "registration" for "registered appraiser or" in Subsection A(5);

inserted "state registered, licensed or certified real estate" and made a stylistic change in Subsection B(4); and deleted "and commission" following "board" in the first sentence of Subsection C.

The 1992 amendment, effective May 20, 1992, inserted "registration" or references to registration in the catchline and throughout the section; made section reference substitutions near the beginning of Subsections A and B; inserted references to registered appraisers in the introductory language to Subsection A and in Subsection A(5); and substituted "applicant or state registered, licensed or certified real estate appraiser" for "applicant or license or certificate holder" in the introductory language to Subsection B.

ANNOTATIONS

Enforcement of settlement agreement. — Where the licensee entered into a settlement agreement with the board to settle complaints that had been filed against the licensee; the agreement permitted the board to determine whether the licensee violated the agreement; and if the licensee did violate the agreement, to revoke or suspend the licensee's license, impose a fine, or take other disciplinary action described in the Uniform Licensing Act, the licensee specifically agreed to the board's authority and waived objections to the board's decision to suspend the licensee's license for violation of the agreement. *Montano v. N.M. Real Estate Appraiser's Bd.*, 2009-NMCA-009, 145 N.M. 494, 200 P.3d 544.

Appellate review of board decision. — Where the district court engages in appellate review of a decision of the board, the district court may not consider facts that were not presented to the board; the district court must accord deference to the board's decision; and the district court may not substitute its judgment for the judgment of the board. *Montano v. N.M. Real Estate Appraiser's Bd.*, 2009-NMCA-009, 145 N.M. 494, 200 P.3d 544.

61-30-15.1. Criminal history background checks. (Repealed effective July 1, 2024.)

A. The board may adopt rules that provide for criminal history background checks for all registrants, certified licensees and licensees to include:

(1) requiring criminal history background checks of applicants for registration, certified licensure or licensure pursuant to the Real Estate Appraisers Act;

(2) requiring applicants for registration, or certified licensure or licensure to be fingerprinted only upon initial licensure or registration;

(3) providing for an applicant who has been denied registration or certified licensure or licensure to inspect or challenge the validity of the criminal history background check record;

(4) establishing a fingerprint and criminal history background check fee not to exceed fees as determined by the department of public safety to be paid by the applicant; and

(5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history background check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks.

History: Laws 2014, ch. 33, § 20; 2019, ch. 209, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2019 amendment, effective July 1, 2020, provided that applicants for registration, or certified licensure or licensure shall be fingerprinted only upon initial licensure

or registration, and clarified certain terms in the section; added "criminal history" or "history", preceding each occurrence of "background check" throughout the section; and in Subsection A, in Paragraph A(2), after "fingerprinted", added "only upon initial licensure or registration".

61-30-16. Standards of professional appraisal practice; certificate of good standing. (Repealed effective July 1, 2024.)

A. Each real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser shall comply with the generally accepted standards of professional appraisal practice and the generally accepted ethical rules to be observed by a real estate appraiser. The generally accepted standards of professional appraisal practice and professional ethics are currently evidenced by the uniform standards of professional appraisal practice. Real estate appraisals shall be written or oral appraisals and subject to appropriate review for compliance with the uniform standards of professional appraisal practice. The work file for an oral appraisal report shall be subject to appropriate review for compliance with the uniform standards of professional appraisal practice.

B. The board, upon payment of a fee in an amount specified in its regulations, may issue a certificate of good standing to any state registered, licensed or certified real estate appraiser who is in good standing under the Real Estate Appraisers Act.

History: Laws 1990, ch. 75, § 16; 1992, ch. 54, § 14; 1993, ch. 269, § 14; 2003, ch. 328, § 14; 2014, ch. 33, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for uniform standards of professional appraisal practice; and in Subsection A, in the first sentence, after "Each real estate appraiser", deleted "registered, licensed or certified under the Real Estate Appraisers Act" and added "trainee, state licensed residential real estate appraiser or state certified real estate appraiser"; in the second sentence, after "professional appraisal practice", added "and professional ethics", and at the end of the sentence, after "professional appraisal practice", deleted "promulgated by the appraisal foundation and as adopted by regulation under the Real Estate Appraisers Act", and added the third and fourth sentences.

The 2003 amendment, effective July 1, 2003, in Subsection A inserted "state apprentice real estate appraiser,

state licensed real estate appraiser or state certified" following "Each" near the beginning, deleted "registered, licensed or certified under the Real Estate Appraisers Act" following "real estate appraiser" near the beginning and substituted "rule pursuant to provisions of" for "regulation under" near the end; and in Subsection B, substituted "rules" for "regulations" following "specified in its" near the beginning, deleted "state registered, licensed or certified" following "good standing to any" near the middle and substituted "in accordance with" for "under" preceding "the Real Estate Appraiser Act" near the end.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in Subsection B.

The 1992 amendment, effective May 20, 1992, inserted "registered" in the first sentence in Subsection A and in Subsection B and added "and as adopted by regulation under the Real Estate Appraisers Act" to the end of Subsection A.

61-30-17. Fees. (Repealed effective July 1, 2024.)

A. Except as provided in Section 61-1-34 NMSA 1978, the board shall charge and collect the following fees not to exceed:

- (1) an application fee for real estate appraiser trainee registration, two hundred dollars (\$200);
- (2) an application fee for a license or residential certification, four hundred dollars (\$400);
- (3) an application fee for general certification, five hundred dollars (\$500);
- (4) an examination fee for general and residential certification or license, two hundred dollars (\$200);
- (5) a registration renewal fee for a real estate appraiser trainee, two hundred fifty dollars (\$250);
- (6) a certificate renewal fee for residential certification, or license renewal, four hundred fifty dollars (\$450);
- (7) a certificate renewal fee for general certification, five hundred dollars (\$500);
- (8) the registry fee as required by the federal real estate appraisal reform amendments;
- (9) for registration for temporary practice, two hundred dollars (\$200), and an additional extension fee may be applied;
- (10) for each duplicate registration, license or certificate issued because a registration, license or certificate is lost or destroyed and an affidavit as to its loss or destruction is made and filed, fifty dollars (\$50.00); and
- (11) fees to cover reasonable and necessary administrative expenses.

B. The board shall establish the fee for appraisal management company registration by rule to cover the cost of the administration of the Appraisal Management Company Registration Act [Chapter 47, Article 14 NMSA 1978], but in no case shall the fee be more than two thousand dollars (\$2,000). Registration fees shall be credited to the appraiser fund pursuant to Section 61-30-18 NMSA 1978.

History: Laws 1990, ch. 75, § 17; 1992, ch. 54, § 15; 1993, ch. 269, § 15; 1999, ch. 283, § 7; 2003, ch. 328, § 15; 2014, ch. 33, § 14; 2020, ch. 6, § 57.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2014 amendment, effective May 21, 2014, established fees for appraiser trainees and appraisal management companies; in Subsection A, in Paragraph (1), after "fee for", added "real estate appraiser trainee"; in Subsection A, in Paragraph (5), after "renewal fee", added "for a real estate appraiser trainee"; in Subsection A, in Paragraph (9), after "two hundred dollars (\$200)", added "and an additional extension fee may be applied"; and added Subsection B.

The 2003 amendment, effective July 1, 2003, substituted "two hundred dollars (\$200)" for "in the amount of one hundred dollars (\$100)" in Subsection A; substituted "four hundred dollars (\$400)" for "in the amount of two hundred dollars (\$200)" in Subsection B; substituted "five hundred dollars (\$500)" for "in the amount of two hundred fifty dollars (\$250)" in Subsection C; substituted "two hundred dollars (\$200)" for "in the amount of one hundred dollars (\$100)" in Subsection D; in Subsection E, deleted "triennial" following "a" near the beginning and substituted "two hundred fifty dollars (\$250)" for "in the amount of one hundred fifty dollars (\$150)"; in Subsection

F, deleted "triennial" following "a" and substituted "four hundred fifty dollars (\$450)" for "in the amount of three hundred dollars (\$300)"; in Subsection G, deleted "triennial" following "a" and substituted "five hundred dollars (\$500)" for "in the amount of four hundred fifty dollars (\$450)"; substituted "two hundred dollars (\$200)" for "in the amount of one hundred dollars (\$100)" in Subsection I; and substituted "fifty dollars (\$50.00)" for "a fee in the amount of twenty-five dollars (\$25.00)" in Subsection J.

The 1999 amendment, effective June 18, 1999, substituted "in the amount of one hundred dollars" for "shall not exceed one hundred dollars"; in Subsection A; substituted "certification or license" for "certification and license" in Subsections D and E; and changed the renewal fees in Subsections E to F to be triennial instead of annual.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" and added "not to exceed" to the end, in the introductory language; rewrote Subsections A, E, and I; deleted former Subsection J, which read: "for registration for temporary practice, for each single appraisal assignment for more than one real property interest, the amount of one hundred dollars (\$100); and"; redesignated former Subsection K as present Subsection J; inserted "registration" in Subsection J; and added present Subsection K, making a related grammatical change.

The 1992 amendment, effective May 20, 1992, substituted "registration" for "license" near the beginning of Subsection A and in Subsection E; made a section reference substitution in Subsection A; inserted "a license or" in Subsection B; inserted "and license" in Subsection D; and inserted "and license renewal" in Subsection E.

61-30-18. Appraiser fund created; disposition; method of payment. (Repealed effective July 1, 2024.)

A. There is created in the state treasury the "appraiser fund" to be administered by the board. All fees received by the board pursuant to the Real Estate Appraisers Act and the Appraisal Management Company Registration Act [Chapter 47, Article 14 NMSA 1978] shall be deposited with

the state treasurer to the credit of the appraiser fund. Income earned on investment of the fund shall be credited to the fund.

B. Money in the appraiser fund shall be used by the board to meet necessary expenses incurred in the enforcement of the provisions of the Real Estate Appraisers Act and the Appraisal Management Company Registration Act, in carrying out the duties imposed by the Real Estate Appraisers Act and the Appraisal Management Company Registration Act and for the promotion of education and standards for real estate appraisers in this state. Payments out of the appraiser fund shall be on vouchers issued and signed by the person designated by the board upon warrants drawn by the department of finance and administration.

C. All unexpended or unencumbered balances remaining at the end of each fiscal year shall remain in the appraiser fund for use in accordance with the provisions of the Real Estate Appraisers Act and the Appraisal Management Company Registration Act. Money in the fund shall be used by the board to support efforts to comply with the rules of the appraisal subcommittee, including the complaint process, complaint investigations and appraiser enforcement activities.

History: Laws 1990, ch. 75, § 18; 1993, ch. 269, § 16; 2009, ch. 214, § 24; 2014, ch. 33, § 15.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for the use of the money in the appraiser fund; and in Subsection C, added the second sentence.

The 2009 amendment, effective June 19, 2009, added "and the Appraisal Management Company Registration Act".

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" throughout the section.

61-30-19. Continuing education. (Repealed effective July 1, 2024.)

A. The board shall adopt rules providing for continuing education programs that offer courses in real property appraisal, practices and techniques, including basic real estate law and practice. The rules shall require that every real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser, as a condition to renewal, shall successfully complete the continuing education requirements approved by the board.

B. The rules shall prescribe areas of specialty or expertise relating to registration, licenses and the type of certificate held and may require that a certain part of continuing education be devoted to courses in the area of the real estate appraiser trainee's, state licensed residential real estate appraiser's or state certified real estate appraiser's specialty or expertise. The rules shall also permit real estate appraiser trainees, state licensed residential real estate appraisers or state certified real estate appraisers to meet the continuing education requirements by participation other than as a student in educational processes and programs in real property appraisal theory, practices and techniques by instructing or preparing educational materials.

History: Laws 1990, ch. 75, § 19; 1992, ch. 54, § 16; 1993, ch. 269, § 17; 2003, ch. 328, § 16; 2014, ch. 33, § 16.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for continuing education for appraiser trainees; in Subsection A, in the second sentence, after "require that every", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential"; in Subsection B, in the first sentence, after "in the area of the", deleted "state apprentice", after "real estate", deleted "appraiser's" and added "appraiser trainee's", and after "state licensed", added "residential"; and in the second sentence, after "shall also permit", deleted "state apprentice", after "real estate", deleted "appraiser's" and added "appraiser trainee", and after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, substituted "rules" for "regulations" throughout the section; in Subsection A, substituted "apprentice real estate appraiser, state" for "registered" following "require that

every state" near the middle, inserted "real estate appraiser" following "licensed" near the middle, inserted "state" preceding "certified real estate appraiser" near the middle, and substituted "the continuing education requirements" for "thirty classroom hours of instruction every three years in courses" following "shall successfully complete" near the end; and in Subsection B, substituted "continuing education" for "the thirty classroom hours of instruction" following "certain part of" near the beginning, substituted "apprentice real estate appraiser's, state" for "registered" following "area of the state" near the middle of the first sentence, inserted "real estate appraiser's" following "licensed" near the middle of the first sentence, inserted "state" preceding "certified real estate appraiser" near the middle of the first sentence, and substituted "apprentice real estate appraiser, state" for "registered" following "shall also permit state" near the beginning of the second sentence, inserted "real estate appraiser" following "licensed" near the middle of the second sentence, inserted "state" preceding "certified real estate appraiser" near the middle of the second sentence.

The 1993 amendment, effective June 18, 1993, in Subsection A, deleted "commission, upon the advice and recommendation of the board and after consultation with the" before "board" near the beginning and substituted "board" for "commission" at the end.

The 1992 amendment, effective May 20, 1992, inserted "registered" in the second sentence in Subsection

A and "registration" near the beginning of Subsection B; and, in Subsection B, substituted "area of the state registered, licensed or certified real estate appraiser's specialty" for "area of the license holder's or certificate holder's specialty" and "permit state registered, licensed or certified real estate appraisers" for "permit licensed or certificate holders".

61-30-20. Nonresident applicants; reciprocity. (Repealed effective July 1, 2024.)

A. Pursuant to Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the board shall issue a registration, license or certificate to a nonresident if the applicant's home state complies with Title 11 as determined by the appraisal subcommittee.

B. The registration, license or certificate shall be issued upon payment of the application fee, verification that the applicant has complied with the applicant's resident state's current education requirements and the filing with the board of a license history and verification of good standing issued by the licensing board of the other state.

C. The applicant shall file an irrevocable consent that suits and actions may be commenced against the applicant in the proper court of any county of this state in which a cause of action may arise from the applicant's actions as a real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser or in which the plaintiff may reside, by the service of any processes or pleadings authorized by the laws of this state on the board, the consent stipulating and agreeing that such service of processes or pleadings on the board shall be taken and held in all courts to be as valid and binding as if personal service has been made upon the applicant in New Mexico. In case any process or pleading mentioned in the case is served upon the board, it shall be by duplicate copies, one of which shall be filed in the office of the board and the other immediately forwarded by registered mail to the nonresident real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser to whom the processes or pleadings are directed.

History: Laws 1990, ch. 75, § 20; 1992, ch. 54, § 17; 1993, ch. 269, § 18; 2003, ch. 328, § 17; 2014, ch. 33, § 17.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for reciprocity for nonresident applicants in conformity with federal law; in Subsection A, deleted all of the former language of the subsection which provided for reciprocity for nonresident applicants if the requirements of their state's laws were the same or similar to the requirements of the Real Estate Appraisers Act or if the nonresident conformed to the conditions of the act, for acceptance of examinations taken in other states, and for interstate agreements allowing reciprocity, and added the language of the current subsection; and in Subsection C, in the first sentence, after "actions as a", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", deleted "residential", and in the second sentence, after "to the nonresident", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, in Subsection A substituted "apprentice real estate appraiser, state" for "registered" following "applicant may become a" near the middle of the second sentence, inserted "real estate appraiser" following "licensed" near the middle of the second sentence, inserted "state" preceding "certified real estate appraiser" near the middle of the second sentence, substituted "at the board's discretion if" for

"provided" near the middle of the third sentence, and substituted "apprentice real estate appraisers, state" for "registered" following "beneficial to New Mexico" near the middle of the fourth sentence, inserted "real estate appraisers" following "licensed" near the middle of the fourth sentence, inserted "state" preceding "certified" near the middle of the fourth sentence and inserted "real estate" preceding "appraisers, the board may" near the middle of the fourth sentence; in Subsection B, substituted "apprentice real estate appraiser, state" for "registered" following "actions as a state" near the middle of the first sentence, inserted "real estate appraiser" following "licensed" near the middle of the first sentence, inserted "state" preceding "certified real estate appraiser" near the middle of the first sentence, substituted "apprentice real estate appraiser, state" for "registered" following "to the nonresident state" near the end of the second sentence, inserted "real estate appraiser" following "licensed" near the end of the second sentence, and inserted "state" preceding "certified real estate appraiser" near the end of the second sentence.

The 1993 amendment, effective June 18, 1993, re-wrote Subsection A and substituted "board" for "commission" throughout Subsection B.

The 1992 amendment, effective May 20, 1992, inserted "registered" and "registration" throughout the section; and, in Subsection A, inserted "shall issue a registration, license or certificate" and substituted "greater conditions" for "lesser conditions" in the first sentence.

61-30-21. Temporary practice. (Repealed effective July 1, 2024.)

A. Pursuant to Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the board shall recognize, on a temporary basis, the registration, certification or license of a real estate appraiser issued by another state if:

(1) the real estate appraiser's business is of a temporary nature and certified by the real estate appraiser not to exceed six months, with no more than one extension allowed; and

(2) the real estate appraiser registers the temporary practice with the board.

B. The applicant or any person registering with the board for temporary practice shall file an irrevocable consent that suits and actions may be commenced against the applicant in the proper court of any county of this state in which a cause of action may arise from the applicant's actions as a real estate appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser or in which the plaintiff may reside, by the service of any processes or pleadings authorized by the laws of this state on the board, the consent stipulating and agreeing that such service of processes or pleadings on the board shall be taken and held in all courts to be as valid and binding as if personal service had been made upon the applicant in New Mexico. If a process or pleading mentioned in the case is served upon the board, it shall be by duplicate copies, one of which shall be filed in the office of the board and the other immediately forwarded by registered mail to the nonresident real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser to whom the processes or pleadings are directed.

History: Laws 1990, ch. 75, § 21; 1992, ch. 54, § 18; 1993, ch. 269, § 19; 2003, ch. 328, § 18; 2014, ch. 33, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for compliance with federal law; in Subsection A, added the beginning of the introductory sentence through "Consumer Protection Act"; in Subsection A, Paragraph (1), after "six months", added "with no more than one extension allowed"; in Subsection B, in the first sentence, after "actions as a", deleted "state apprentice", after "real estate appraiser", added "trainee, a", and after "state licensed", added "residential", and in the second sentence, after "to the nonresident", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, in Subsection A substituted "apprentice real estate appraiser, state" for "registered" following "actions as a state" near the beginning of the first sentence, inserted "real estate appraiser" following "licensed" near the beginning of the first sentence, inserted "state" preceding "certified real

estate appraiser" near the beginning of the first sentence, and substituted "apprentice real estate appraiser, state" for "registered" following "to the nonresident state" near the end of the second sentence, inserted "real estate appraiser" following "licensed" near the end of the second sentence, and inserted "state" preceding "certified real estate appraiser" near the end of the second sentence.

The 1993 amendment, effective June 18, 1993, in Subsection A, deleted "In accordance with 12 U.S.C. 3351" from the beginning, deleted former Paragraph (1), which read: "the property to be appraised is part of a federally related transaction, as defined in the federal real estate appraisal reform amendments", renumbered former Paragraphs (2) and (3) as present Paragraphs (1) and (2), deleted "and commission" after "board" in the introductory language and Paragraph (2), and inserted "real estate" before "appraiser" throughout the subsection, making a related stylistic change; and in Subsection B, deleted "and commission" after "board" near the beginning and substituted "board" for "commission" throughout.

The 1992 amendment, effective May 20, 1992, inserted "registration" in the introductory language to Subsection A and "registered" in two places in Subsection B.

61-30-22. Civil and criminal penalties; injunctive relief. (Repealed effective July 1, 2024.)

A. Any person who violates any provision of the Real Estate Appraisers Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six months or both.

B. In the event any person has engaged in or proposes to engage in any act or practice violating a provision of the Real Estate Appraisers Act, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur shall, upon application of the board, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

C. The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation of the Real Estate Appraisers Act and assess administrative costs for any investigation and administrative or other proceedings against a real estate appraiser trainee,

a state licensed residential real estate appraiser or a state certified real estate appraiser. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty not to exceed two thousand dollars (\$2,000) against any person who is found, through an administrative proceeding, to have acted without a license. Appeals from decisions of the board shall be taken as provided in Section 39-3-1.1 NMSA 1978.

History: Laws 1990, ch. 75, § 22; 1993, ch. 269, § 20; 2003, ch. 328, § 19; 2014, ch. 33, § 19; 2017, ch. 52, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided that the real estate appraisers board may impose a civil penalty not to exceed two thousand dollars (\$2,000) against any person found to have acted without a license; in Subsection C, after "certified real estate appraiser", deleted "or" and added a period, and after the period, added "The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty not to exceed two thousand dollars (\$2,000)".

The 2014 amendment, effective May 21, 2014, provided penalties for appraiser trainees; and in Subsection

C, in the first sentence, after "proceedings against a", deleted "state apprentice", after "real estate appraiser", added "trainee, a", and after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, substituted "Civil and criminal penalties" for "Penalty" at the beginning of the section heading; substituted "one thousand dollars (\$1,000)" for "five hundred dollars (\$500)" in Subsection A; and added Subsection C.

The 1993 amendment, effective June 18, 1993, deleted "commission, upon the advice and recommendation of the" before "board" in Subsection B.

61-30-23. Repealed.

Repeals. — Laws 1993, ch. 269, § 22 repealed 61-30-23 NMSA 1978, as enacted by Laws 1990, ch. 75, § 23, providing for waiver of license requirements for 180 days after

December 1, 1990 for certain applicants, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

61-30-24. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The real estate appraisers board is terminated effective July 1, 2023. The Real Estate Appraisers Act shall continue in effect until July 1, 2024. Chapter 61, Article 30 NMSA 1978 is repealed effective July 1, 2024.

History: 1978 Comp., § 61-30-24, enacted by Laws 1993, ch. 269, § 21; 2000, ch. 4, § 18; 2005, ch. 208, § 22; 2011, ch. 30, § 9; 2017, ch. 52, § 15.

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

The 2000 amendment, effective February 15, 2000, substituted "2005" for "1999" in the first sentence and "2006" for "2000" in the last two sentences.

ARTICLE 31

Social Work Practice

Sec.

61-31-1. Short title. (Repealed effective July 1, 2032.)

61-31-2. Repealed.

61-31-3. Definitions. (Repealed effective July 1, 2032.)

61-31-4. License required. (Repealed effective July 1, 2032.)

61-31-4.1. Licensed independent social worker; licensure; qualifications. (Repealed effective July 1, 2032.)

61-31-4.2. Licensed clinical social worker; licensure; qualifications. (Repealed effective July 1, 2032.)

61-31-4.3. Licensed master of social work; licensure; qualifications. (Repealed effective July 1, 2032.)

61-31-4.4. Licensed bachelor of social work; licensure; qualifications. (Repealed effective July 1, 2032.)

Sec.

61-31-4.5. Appropriate supervision; guidelines. (Repealed effective July 1, 2032.)

61-31-5. Use of title; other professions. (Repealed effective July 1, 2032.)

61-31-6. Scope of practice. (Repealed effective July 1, 2032.)

61-31-7. Board created. (Repealed effective July 1, 2032.)

61-31-8. Board's authority. (Repealed effective July 1, 2032.)

61-31-9. Repealed.

61-31-10. Examination. (Repealed effective July 1, 2032.)

61-31-11. Provisional licensure. (Repealed effective July 1, 2032.)

61-31-12. Repealed.

61-31-13. Licensure by credentials. (Repealed effective July 1, 2032.)

Sec.

61-31-13.1. Repealed.

61-31-14. License renewal. (Repealed effective July 1, 2032.)

61-31-15. License fees. (Repealed effective July 1, 2032.)

61-31-16. Fund established. (Repealed effective July 1, 2032.)

61-31-17. License denial, suspension or revocation. (Repealed effective July 1, 2032.)

61-31-18. Impaired social workers. (Repealed effective July 1, 2032.)

61-31-19. Impaired social workers' program. (Repealed effective July 1, 2032.)

Sec.

61-31-20. Provision for hearing. (Repealed effective July 1, 2032.)

61-31-21. Criminal offender's character evaluation. (Repealed effective July 1, 2032.)

61-31-22. Penalties. (Repealed effective July 1, 2032.)

61-31-23. Repealed.

61-31-24. Privileged communications. (Repealed effective July 1, 2032.)

61-31-25. Termination of agency life; delayed repeal. (Repealed effective July 1, 2032.)

61-31-1. Short title. (Repealed effective July 1, 2032.)

Chapter 61, Article 31 NMSA 1978 may be cited as the "Social Work Practice Act".

History: Laws 1989, ch. 51, § 1; 2006, ch. 4, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

The 2006 amendment, effective May 17, 2006, changed the short title to include all of Chapter 61, Article 31 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 4, 5, 14, 39 to 41, 45 to 47, 58 to 62, 72, 73.

Cause of action for clergy malpractice, 75 A.L.R.4th 750. 53 C.J.S. Licenses §§ 5, 7, 22, 30, 34 to 66, 82.

61-31-2. Repealed.

Repeals. — Laws 2019, ch. 143, § 16 repealed 61-31-2 NMSA 1978, as enacted by Laws 1989, ch. 51, § 2, relating

to purpose, effective June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

61-31-3. Definitions. (Repealed effective July 1, 2032.)

As used in the Social Work Practice Act:

- A. "advisory committee" means an evaluation advisory committee;
- B. "appropriate supervision" means supervision by a licensed clinical social worker or licensed independent social worker with two years of supervised social work practice experience or other supervision that is deemed by the board to be equivalent to supervision by a licensed clinical social worker or licensed independent social worker;
- C. "board" means the board of social work examiners;
- D. "client" means an individual, couple, family, group, organization or community that seeks or receives social work services from an individual social worker or an organization;
- E. "consultation" means a problem-solving process in which expertise is offered to an individual, group organization or community;
- F. "continuing education" means approved education and training that are oriented to maintain, improve or enhance social work practice;
- G. "department" means the regulation and licensing department;
- H. "executive agency" means any agency within the executive branch of government;
- I. "licensed bachelor of social work" means a person who engages in the practice of social work under appropriate supervision and meets the qualification of a licensed bachelor of social work pursuant to the Social Work Practice Act;
- J. "licensed clinical social worker" means a person who is licensed in the state to engage in clinical social work practice and meets the qualifications for a licensed clinical social worker pursuant to the Social Work Practice Act;
- K. "licensed independent social worker" means a person who is licensed in the state to engage in social work practice other than clinical social work and meets the qualifications for a licensed independent social worker pursuant to the Social Work Practice Act;
- L. "licensed master of social work" means a person who engages in the practice of social work under appropriate supervision and meets the qualification of a licensed master of social work pursuant to the Social Work Practice Act;

M. "professional code of ethics" means a code of ethics or professional standards promulgated by a national organization of social work professionals that provides guidance, research, advocacy and other services to social workers;

N. "recognized association" means a nonprofit national association of educational and professional institutions, social welfare agencies and private citizens recognized as an accrediting agency for social work education in the United States by a self-regulating organization of degree-granting colleges and universities;

O. "supervision" means an interactional professional relationship between a social worker and a supervisor who:

(1) provides evaluation of and direction to a licensed bachelor of social work or a licensed master of social work; and

(2) promotes continued development of a licensed bachelor of social work's or a licensed master of social work's knowledge, skill and ability to practice social work; and

P. "supervisor" means an individual who provides appropriate supervision.

History: Laws 1989, ch. 51, § 3; 2006, ch. 4 § 2; 2019, ch. 143, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

The 2019 amendment, effective June 14, 2019, defined "client", "consultation", "continuing education", "licensed bachelor of social work", "licensed clinical social worker", "licensed independent social worker", "licensed master of social work", "recognized association", "supervision", and "supervisor", and revised the definitions of certain terms, as used in the Social Work Practice Act"; in Subsection B, after "supervision by", deleted "an" and added "a licensed clinical social worker or licensed", after "independent social worker", deleted "or a master social worker", and after "supervision by a", deleted "master" and added "licensed clinical social worker or licensed independent"; deleted former Subsection C, which defined "baccalaureate

social worker", and redesignated former Subsection D as Subsection C; added new Subsections D through F and redesignated former Subsections E and F as Subsections G and H, respectively; deleted former Subsections G and H, which defined "independent social worker" and "master social worker", respectively; added new Subsections I through L and redesignated former Subsection I as Subsection M; in Subsection M, after "means", deleted "a code of ethics and rules adopted by the board, designed to protect the public and to regulate the professional conduct of social workers" and added "a code of ethics or professional standards promulgated by a national organization of social work professionals that provides guidance, research, advocacy and other services to social workers"; and added new Subsections N through P.

The 2006 amendment, effective May 17, 2006, made no changes.

61-31-4. License required. (Repealed effective July 1, 2032.)

A. Effective January 1, 1990, unless licensed to practice social work under the Social Work Practice Act, no person shall:

(1) practice as an independent social worker, clinical social worker, master of social work or bachelor of social work as defined in the Social Work Practice Act; or

(2) use the title or make any representation as being a licensed social worker of any type or level or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed as a social worker.

B. Notwithstanding the provisions of Subsection A of this section, an individual who is employed in an executive agency on or after July 1, 1989 under the title of social worker or other title that is deemed to be social work practice by the board and who has a bachelor's degree or higher in a field other than social work shall not be required to be licensed until July 1, 1992; provided an employee of an executive agency who qualifies for licensure under the provisions of the Social Work Practice Act shall apply for licensure as provided in that act.

History: Laws 1989, ch. 51, § 4; 1991, ch. 222, § 1; 2019, ch. 143, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2019 amendment, effective June 14, 2019, required licensure to practice as a clinical social worker, master of social work and a bachelor of social work; in Subsection A, in Paragraph A(1), after "independent social worker," added "clinical social worker, master of social work or bachelor of social work", in Paragraph A(2), after

"title or", deleted "represent himself as" and added "make any representation as being", and after "licensed social worker", added "of any type or level"; and in Subsection B, after "on or after", deleted "the effective date of the Social Work Practice Act" and added "July 1, 1989".

The 1991 amendment, effective June 14, 1991, substituted "July 1, 1992" for "July 1, 1991" in Subsection B.

"Effective date of the Social Work Practice Act". — The phrase "effective date of the Social Work Practice Act", referred to in Subsection B, means July 1, 1989, the effective date of Laws 1989, ch. 51.

61-31-4.1. Licensed independent social worker; licensure; qualifications. (Repealed effective July 1, 2032.)

After receipt of an application, requisite fees and documentation in accordance with board rules, the board shall issue in a timely manner a license to practice as a licensed independent social worker to an individual who:

- A. is at least eighteen years of age;
- B. possesses at least a master's degree in social work from a graduate program of social work accredited by a recognized association;
- C. completed post-graduate social work hours and experience as an employee or independent worker under appropriate supervision;
- D. is trained in New Mexico cultures;
- E. passed a jurisprudence examination; and
- F. passed an examination approved by the board, including an advanced generalist examination administered by a nonprofit association composed of and owned by social work regulatory boards and colleges in all states.

History: Laws 2019, ch. 143, § 11.

Effective dates. — Laws 2019, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-31-4.2. Licensed clinical social worker; licensure; qualifications. (Repealed effective July 1, 2032.)

After receipt of an application, requisite fees and documentation in accordance with board rules, the board shall issue in a timely manner a license to practice as a licensed clinical social worker to an individual who:

- A. is at least eighteen years of age;
- B. possesses at least a master's degree in social work from a graduate program of social work accredited by a recognized association;
- C. completed post-graduate social work hours and experience as an employee or independent worker under appropriate supervision;
- D. is trained in New Mexico cultures;
- E. passed a jurisprudence examination; and
- F. passed an examination approved by the board, including a clinical examination administered by a nonprofit association composed of and owned by social work regulatory boards and colleges in all states.

History: Laws 2019, ch. 143, § 12.

Effective dates. — Laws 2019, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-31-4.3. Licensed master of social work; licensure; qualifications. (Repealed effective July 1, 2032.)

After receipt of an application, requisite fees and documentation in accordance with board rules, the board shall issue in a timely manner a license to practice as a licensed master of social work to an individual who:

- A. is at least eighteen years of age;
- B. possesses at least a master's degree in social work from a graduate program of social work accredited by a recognized association;
- C. is trained in New Mexico cultures;
- D. passed a jurisprudence examination; and

E. passed an examination approved by the board, including a master's examination administered by a nonprofit association composed of and owned by social work regulatory boards and colleges in all states.

History: Laws 2019, ch. 143, § 13. **Effective dates.** — Laws 2019, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-31-4.4. Licensed bachelor of social work; licensure; qualifications. (Repealed effective July 1, 2032.)

After receipt of an application, requisite fees and documentation in accordance with board rules, the board shall issue in a timely manner a license to practice as a licensed bachelor of social work to an individual who:

- A. is at least eighteen years of age;
- B. possesses at least a bachelor's degree in social work from a graduate program of social work accredited by a recognized association;
- C. is trained in New Mexico cultures;
- D. passed a jurisprudence examination; and
- E. passed an examination approved by the board, including a bachelor's examination administered by a nonprofit association composed of and owned by social work regulatory boards and colleges in all states.

History: Laws 2019, ch. 143, § 14. **Effective dates.** — Laws 2019, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-31-4.5. Appropriate supervision; guidelines. (Repealed effective July 1, 2032.)

An individual providing appropriate supervision as defined in Section 61-31-3 NMSA 1978 shall conform to supervision guidelines that the board establishes by rule.

History: Laws 2019, ch. 143, § 15. **Effective dates.** — Laws 2019, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-31-5. Use of title; other professions. (Repealed effective July 1, 2032.)

A. Except as otherwise provided in the Social Work Practice Act, it is unlawful for an individual not licensed as a social worker to:

- (1) engage in the practice of social work;
- (2) hold the individual out as a social worker or claim to be a social worker or use the title of social worker; or
- (3) use any abbreviation or title that implies or would lead the public to believe that the individual is a social worker or is licensed to practice social work.

B. Nothing in the Social Work Practice Act shall be construed to prevent qualified members of other recognized professions that are licensed, certified or regulated under New Mexico law or regulation from rendering services within the scope of their license, certification or regulation; provided that they do not represent themselves as licensed social workers.

History: Laws 1989, ch. 51, § 5; 2019, ch. 143, § 3. **Delayed repeals.** — For delayed repeal of this section, see 61-31-25 NMSA 1978. **The 2019 amendment,** effective June 14, 2019, prohibited the practice of social work, the holding out as a social worker and the use of the title of social worker without being licensed as a social worker; in the section heading, replaced "exemptions" with "use of title; other professions"; added new Subsection A and subsection designation "B."

61-31-6. Scope of practice. (Repealed effective July 1, 2032.)

A. For the purposes of the Social Work Practice Act, a person is practicing social work if he advertises, offers himself to practice, is employed in a position described as social work or holds out to the public or represents in any manner that he is licensed to practice social work in this state.

B. Social work practice means a professional service and emphasizes the use of specialized knowledge of social resources, social systems and human capabilities to effect change in human behavior, emotional responses and social conditions. Services may be rendered through direct assistance to individuals, couples, families, groups and community organizations. Social work practice focuses on both direct and indirect services to facilitate change on the intrapersonal, interpersonal and systemic levels. Areas of specialization that address these include but are not limited to the following:

(1) clinical social work practice, which is the professional application of social work theory and methods in the diagnosis, treatment and prevention of psychosocial dysfunction, disability or impairment, including but not limited to emotional and mental disorders. It is based on knowledge of one or more theories of human development within a psychosocial context. Clinical social work includes interventions directed to interpersonal interactions, intrapsychic dynamics or life support and management issues. Clinical social work services consist of assessment, diagnosis and treatment, including psychotherapy and counseling, client-centered advocacy, consultation and evaluation;

(2) social work research practice, which is the professional study of human capabilities and practice of social work specialties, including direct and indirect practice, through the formal organization and the methodology of data collection and the analysis and evaluation of social work data;

(3) social work community organization, planning and development practice, which is a conscious process of social interaction and method of social work concerned with the meeting of broad needs and bringing about and maintaining adjustment between needs and resources in a community or other areas; helping people to deal more effectively with their problems and objectives by helping them develop, strengthen and maintain qualities of participation, self-direction and cooperation; and bringing about changes in community and group relationships and in the distribution of decision-making power. The community is the primary client in community organizations. The community may be an organization, neighborhood, city, county, state or national entity;

(4) social work administration, which is the practice that is concerned primarily with translating laws, technical knowledge and administrative rulings into organizational goals and operational policies to guide organizational behavior; designing organizational structure and procedures or processes through which social work goals can be achieved; and securing resources in the form of material, staff, clients and societal legitimation necessary for goal attainment and organizational survival; and

(5) university social work faculty, which provides an equal quality of social work education in identified areas of content; prepares graduates to practice in a range of geographic areas with diverse populations; and establishes the foundation for practitioners' professional futures, exposing them to the best of current knowledge and developing in them the ability to continue questioning and learning, as well as an awareness of their responsibility to continue this professional development.

History: Laws 1989, ch. 51, § 6; 1996, ch. 51, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

The 1996 amendment, effective March 5, 1996, made a stylistic change in Subsection B and inserted "university" at the beginning of Paragraph B(5) and substituted "faculty" for "education practice" in that paragraph.

61-31-7. Board created. (Repealed effective July 1, 2032.)

A. There is created the "board of social work examiners".

B. The board shall be administratively attached to the department.

C. The board shall consist of seven members who are representative of the geographic and ethnic groups within New Mexico, who have been New Mexico residents prior to their appointment and maintain New Mexico residency during their appointment. Of the seven members:

(1) four members shall have been engaged in social work practice for at least five years; at least two of the four shall hold a master's degree in social work; and at least two shall hold a

bachelor's degree in social work from schools of social work that are accredited by the council on social work education. At least one of these members shall be engaged primarily in clinical social work practice; one member shall be engaged primarily in education; one member shall be engaged primarily in administration or research in social work practice; and at least one member shall be engaged primarily in community organization, planning and development. These members may join professional organizations and associations organized exclusively to promote the improvement of the practice of social work for the protection of the health and welfare of the public or whose activities assist and facilitate the work of the board; and

(2) three members shall represent the public. The public members shall not have been licensed or have practiced as social workers. Public members shall not have any significant financial interest, whether direct or indirect, in social work practice.

D. Members of the board shall be appointed by the governor for staggered terms of three years. Each member shall hold office until a successor is appointed. Vacancies shall be filled for the unexpired term in the same manner as original appointments.

E. Except for the representatives of the public on the board, the governor shall appoint board members from a list of nominees submitted by social work organizations and individual social work professionals or from a pool of resumes submitted to the governor by individuals applying for membership.

F. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

G. The board shall elect a chair and other officers as deemed necessary to administer its duties.

H. A simple majority of the board members currently serving shall constitute a quorum of the board.

I. The board shall meet at least once a year and at such other times as it deems necessary. Other meetings may be called by the chair upon the written request of a quorum of the board. The board may permit electronic participation in board meetings in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and board rules.

J. The governor may remove any member from the board for:

- (1) the neglect of any duty required by law;
- (2) incompetence;
- (3) improper or unprofessional conduct as defined by board rule;
- (4) violation of the current professional code of ethics or professional standards promulgated by a national organization of social work professionals that provides guidance, research, advocacy and other services to social workers; or
- (5) any reason that would justify the suspension or revocation of that member's license to practice social work.

K. A board member shall not serve more than two consecutive terms, and any member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member, unless excused for reasons set forth in board rules.

L. In the event of a vacancy for any reason, the board secretary shall immediately notify the governor and the board of the vacancy and the reason for its occurrence to expedite the appointment of a new board member within a six-month period.

History: Laws 1989, ch. 51, § 7; 1996, ch. 51, § 15; 2006, ch. 4, § 3; 2019, ch. 143, § 4; 2021, ch. 93, § 16.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

The 2021 amendment, effective June 18, 2021, required the board of social work examiners to maintain New Mexico residency during their appointment to the board; and in Subsection C, after "appointment", added "and maintain New Mexico residency during their appointment".

The 2019 amendment, effective June 14, 2019, removed certain criteria for being a member of the board of social work examiners, removed a provision prohibiting sitting board members from holding office in a professional organization of social workers, authorized board members to join professional organizations, provided that the governor may appoint certain board members from

a pool of resumes submitted by individuals applying for membership, provided that the board may permit electronic participation in board meetings, and provided that the governor may remove any member from the board for a violation of the current professional code of ethics or professional standards; in Subsection C, in the introductory clause, after "within New Mexico" deleted "who are United States citizens", and after "New Mexico residents", deleted "for at least five years", in Paragraph C(1), after "These members", deleted "shall not hold office in any professional organization of social workers during their tenure on the board" and added the remainder of the paragraph; in Subsection E, after "social work professionals", added "or from a pool of resumes submitted to the governor by individuals applying for membership"; in Subsection I, after "quorum of the board.", added "The board may

permit electronic participation in board meetings in accordance with the Open Meetings Act and board rules; and in Subsection J, added new paragraph designations "(1)" through "(3)" and "(5)", and added new Paragraph J(4).

The 2006 amendment, effective May 17, 2006, deleted the provision in Subsection D for appointment of initial members to the board and changed the word "executive" to "consecutive" in Subsection K.

The 1996 amendment, effective March 5, 1996, in Subsection C substituted "seven" for "ten" twice and inserted "geographic and", rewrote Paragraph C(1), deleted former Paragraph C(2) providing that one member shall hold a degree and be experienced in social work, and redesignated the following paragraphs accordingly, and substituted "three" for "five" at the beginning of Paragraph C(2); and rewrote Subsection L.

61-31-8. Board's authority. (Repealed effective July 1, 2032.)

In addition to any authority provided by law, the board shall have the authority to:

A. adopt and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules necessary to carry out the provisions of the Social Work Practice Act, in accordance with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], including the procedures for an appeal of an examination failure;

B. select, prepare and administer, at least annually, examinations for licensure;

C. adopt a current professional code of ethics or professional standards promulgated by a national organization of social work professionals that provides guidance, research, advocacy and other services to social workers;

D. appoint advisory committees pursuant to Section 61-31-19 NMSA 1978;

E. conduct hearings on an appeal of a denial of a license based on the applicant's failure to meet the minimum qualifications for licensure. The hearing shall be conducted pursuant to the Uniform Licensing Act;

F. require and establish criteria for continuing education;

G. issue subpoenas, statements of charges, statements of intent to deny licenses and orders and delegate in writing to a designee the authority to issue subpoenas, statements of charges and statements of intent to deny licenses and establish procedures for receiving, investigating and conducting hearings on complaints;

H. request that an individual who is violating the Social Work Practice Act:

(1) voluntarily stop violating the Social Work Practice Act; and

(2) meet with the board. If the board's requests to an individual pursuant to this subsection are unsuccessful or in a situation that the board deems to be an emergency, the board may apply for an injunction in district court to enjoin any person from committing any act prohibited by the Social Work Practice Act;

I. develop criteria to approve appropriate supervision for a person seeking licensure as a licensed independent social worker or a licensed clinical social worker based upon the prospective supervisor's:

(1) education;

(2) experience; and

(3) level of training;

J. issue provisional licenses, temporary licenses and licenses based on credentials to persons meeting the requirements set forth in the Social Work Practice Act;

K. determine qualifications for licensure, including the requirement to demonstrate an awareness and knowledge of New Mexico cultures;

L. set fees for licenses as authorized by the Social Work Practice Act and authorize all disbursements necessary to carry out the provisions of the Social Work Practice Act;

M. keep a record and provide notice of all proceedings in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and shall make an annual report to the governor; and

N. determine the appropriate application of technology to social work practice, including video conferencing, for appropriate supervision and client contact.

History: Laws 1989, ch. 51, § 8; 2003, ch. 408, § 34; 2006, ch. 4, § 4; 2019, ch. 143, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

The 2019 amendment, effective June 14, 2019, removed certain authority from the board of social work examiners related to the supervision of persons seeking

licensure as independent social workers, authorized the board to take certain steps in addressing violations of the Social Work Practice Act, authorized the board to develop criteria to approve appropriate supervision for those persons seeking licensure as a licensed independent social worker or a licensed clinical social worker, and authorized the board to determine the appropriate application

of technology to social work practice; in Subsection B, deleted "written" preceding "examinations"; deleted Subsection H, added new Subsections H and I and redesignated former Subsections I through L as Subsections J through M, respectively; and added new Subsection N.

The 2006 amendment, effective May 17, 2006, deletes the requirement in Subsection B that written examinations include testing of the knowledge of New Mexico cultures; provides in Subsection I that the board may issue

temporary licenses; and provides in Subsection J that the board may require a demonstration of awareness and knowledge of New Mexico cultures.

The 2003 amendment, effective July 1, 2003, substituted "61-31-19 NMSA 1978" for "19 of the Social Work Practice Act" at the end of Subsection D; and deleted former Subsections L and M, concerning staff, office space and administrative support, and redesignated former Subsection N as present Subsection L.

61-31-9. Repealed.

Repeals. — Laws 2019, ch. 143, § 16 repealed 61-31-9 NMSA 1978, as enacted by Laws 1989, ch. 51, § 9, relating to requirements for licensure, effective June 14, 2019. For

provisions of former section, see the 2018 NMSA 1978 on NMSAOneSource.com.

61-31-10. Examination. (Repealed effective July 1, 2032.)

The date and location of the social work licensure examination shall be established by the board. Applicants who have been found to meet the education and experience requirements for licensure shall be scheduled for the next examination following the filing of the application. The board shall establish by rule the examination application deadline and other rules relating to the retaking of the licensure examination.

History: Laws 1989, ch. 51, § 10; 2019, ch. 143, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

The 2019 amendment, effective June 14, 2019, removed the requirement that the social work licensure

examination be in writing; in the section heading, deleted "written" preceding "examination", and after "date and location of the", deleted "written".

61-31-11. Provisional licensure. (Repealed effective July 1, 2032.)

Prior to examination, an applicant for licensure who holds a bachelor's degree or master's degree in social work may obtain a provisional license to engage in social work practice as long as the applicant meets all the requirements, except examination, pursuant to the Social Work Practice Act for the level of license sought. The provisional license is valid for a period not to exceed one year, unless a federal or state public health emergency is declared pursuant to the Public Health Emergency Response Act [Chapter 12, Article 10A NMSA 1978] and directly impacts the applicant; in which case, an applicant's provisional license shall be automatically extended for the duration of the public health emergency and for an additional six months, beginning on the day that the public health emergency ends.

History: Laws 1989, ch. 51, § 11; 2007, ch. 191, § 1; 2019, ch. 143, § 7; 2021, ch. 93, § 17.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided a public health emergency exception to an existing provision that provides that a provisional license is valid for a period not to exceed one year; and added "unless a federal or state public health emergency is declared pursuant to the Public Health Emergency Response Act and directly impacts the applicant; in which case, an applicant's provisional license shall be automatically extended for the duration of the public health emergency and for

an additional six months, beginning on the day that the public health emergency ends".

The 2019 amendment, effective June 14, 2019, limited provisional licenses to engage in social work to those individuals who hold a bachelor's degree or master's degree in social work; after "applicant for licensure", added "who holds a bachelor's degree or master's degree in social work", after "except examination," deleted "as prescribed in Section 61-31-10 NMSA 1978" and added "pursuant to the Social Work Practice Act".

The 2007 amendment, effective June 15, 2007, provides that a provisional license is valid for a period not to exceed one year.

61-31-12. Repealed.

Repeals. — Laws 2019, ch. 143, § 16 repealed 61-31-12 NMSA 1978, as enacted by Laws 1989, ch. 51, § 12, relating to licensure without written examination, effective

June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on NMSAOneSource.com.

61-31-13. Licensure by credentials. (Repealed effective July 1, 2032.)

A. The board shall license an applicant for the licensure level sought, provided the applicant:

(1) possesses and has held for a minimum of two and one-half years a valid social worker license issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation;

(2) is in good standing with no disciplinary action pending or brought against the applicant within the past two and one-half years;

(3) possesses a bachelor's or master's degree in social work from a program of social work accredited by the council on social work education;

(4) verifies that the applicant has taken and passed the national examination as defined by rule; and

(5) demonstrates an awareness and knowledge of New Mexico cultures to the board.

B. The applicant will not have to further verify the applicant's experience, schooling or degrees if the criteria pursuant to Subsection A of this section are met.

History: Laws 1989, ch. 51, § 13; 2006, ch. 4, § 6; 2021, ch. 93, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed discretionary language, and added mandatory language, related to the board of social work examiner's power to issue a license to a person who furnishes evidence to the board that the person has been licensed as a social worker by another state, territory of the United States, the District of Columbia or another country for two and one-half years, and revised qualifications for an applicant seeking a license pursuant to this section; in the section heading, after "credentials", deleted "reciprocity"; and in Subsection A, after "The board", changed "may" to "shall", and changed "five" to "two and one-half", throughout, in Paragraph A(3), after "of social work", deleted "approved by the board" and added "accredited by the council

on social work education", and in Paragraph A(5), after "cultures", deleted "as determined by" and added "to".

The 2006 amendment, effective May 17, 2006, provides for the licensure of an applicant in the licensure level sought by the applicant in Subsection A; deletes the authority of the board to issue a license without written examination in Subsection A; requires that an applicant have held for a minimum of five years a valid social worker license from another licensing jurisdiction and deletes the requirement that the other licensing jurisdiction have requirements that equal or exceed the requirements in the Social Work Practice Act for the licensure level sought in Paragraph (1) of Subsection A; adds Paragraphs (2) through (5) of Subsection A to provide criteria for licensure; and adds Subsection B to provide that the applicant will not have to verify other qualifications if the criteria in Subsection A are met.

61-31-13.1. Repealed.

Repeals. — Laws 2019, ch. 143, § 16 repealed 61-31-13.1 NMSA 1978, as enacted by Laws 2006, ch. 4, § 8, relating to temporary licensure, effective June 14, 2019. For

provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

61-31-14. License renewal. (Repealed effective July 1, 2032.)

A. Each licensee shall renew the licensee's license biennially by submitting a renewal application on a form provided by the board. At the time of license renewal, the board shall require a licensee to produce evidence of continuing education, as prescribed by the board. The board may establish a method to provide for staggered biennial terms of licensure. The board may authorize license renewal for one year to establish the renewal cycle.

B. A thirty-day grace period shall be allowed each licensee after each annual licensing period, during which time licenses may be renewed upon payment of the renewal fee and providing evidence of continuing education as prescribed by the board.

C. Any licensee who allows the licensee's license to lapse for longer than three months shall have the license automatically revoked and may be required to take an examination.

D. A late penalty fee shall be assessed after the thirty-day grace period has expired for anyone attempting to renew a license to practice social work.

History: Laws 1989, ch. 51, § 14; 1996, ch. 51, § 16; 2006, ch. 4, § 7; 2019, ch. 143, § 8.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

The 2019 amendment, effective June 14, 2019, removed the requirement that the social work licensure examination be in writing; in Subsection C, after "required to take", deleted "a written" and added "an".

The 2006 amendment, effective May 17, 2006, changed the renewal period from annually to biennially and authorized the board to provide for staggered biennial terms of licensure in Subsection A; authorized the board to prescribe the fee and evidence of continuing education required for license renewal in Subsection B; and changed Subsection C to eliminate the mandatory requirement

that the board require a written examination for the renewal of a license that has been revoked for timely failure to renew.

The 1996 amendment, effective March 5, 1996, substituted "thirty-day" for "sixty-day" in Subsections B and D and substituted "three" for "six" and made a stylistic change in Subsection C.

61-31-15. License fees. (Repealed effective July 1, 2032.)

Except as provided in Section 61-1-34 NMSA 1978, applicants for licensure shall pay fees set by the board, not to exceed:

- A. for examination for any level of licensure other than initial licensure, two hundred dollars (\$200);
- B. for initial licensure following an examination as a licensed bachelor of social work, two hundred dollars (\$200);
- C. for initial licensure following an examination as a licensed master of social work, three hundred dollars (\$300);
- D. for initial licensure following an examination as a licensed independent social worker, three hundred dollars (\$300);
- E. for licensure by credentials at any level, three hundred dollars (\$300);
- F. for licensure without examination, including a provisional license, as a licensed bachelor of social work, one hundred fifty dollars (\$150);
- G. for licensure without examination, including a provisional license, as a licensed master of social work, two hundred fifty dollars (\$250);
- H. for licensure without examination, including a provisional license, as a licensed independent social worker, three hundred dollars (\$300);
- I. for renewal of a license as a licensed bachelor of social work, one hundred dollars (\$100);
- J. for renewal of a license as a licensed master of social work, two hundred dollars (\$200);
- K. for renewal of a license as a licensed independent social worker, three hundred dollars (\$300);
- L. for a late fee for failure to renew within the allotted grace period, one hundred dollars (\$100); and
- M. for a duplicate license, twenty-five dollars (\$25.00).

History: Laws 1989, ch. 51, § 15; 2019, ch. 143, § 9; 2020, ch. 6, § 58.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2019 amendment, effective June 14, 2019, removed the requirement that the social work licensure examination be in writing, and made certain technical amendments; deleted "written" preceding each occurrence of "examination" throughout the section, and added "licensed" preceding each occurrence of "bachelor of social work", "master of social work", and "independent social worker".

61-31-16. Fund established. (Repealed effective July 1, 2032.)

- A. There is created in the state treasury the "board of social work examiners fund".
- B. All money received by the board under the Social Work Practice Act shall be deposited with the state treasurer for credit to the fund. The state treasurer shall invest the fund as other state funds are invested, and all income derived from investment of the fund shall be credited to the fund. All balances in the fund shall remain in the fund and shall not revert to the general fund.
- C. Money in the fund is appropriated to the board and shall be used only for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Social Work Practice Act.

History: Laws 1989, ch. 51, § 16.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

61-31-17. License denial, suspension or revocation. (Repealed effective July 1, 2032.)

A. In accordance with procedures contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, revoke or suspend any license held or applied for under the Social Work Practice Act, upon grounds that the licensee or applicant:

- (1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure any license or certification provided for in the Social Work Practice Act;
- (2) has been adjudicated as mentally incompetent by regularly constituted authorities;
- (3) has been convicted of a felony;
- (4) is guilty of unprofessional or unethical conduct;
- (5) is habitually or excessively using controlled substances or alcohol;
- (6) has repeatedly and persistently violated any of the provisions of the Social Work Practice Act or regulations of New Mexico or any other state or territory and has been convicted thereof;
- (7) has been convicted of the commission of any illegal operation;
- (8) is grossly negligent or incompetent in the practice of social work;
- (9) has had a license to practice social work revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction, territory or possession of the United States or another country making such revocation, suspension or denial shall be conclusive evidence thereof; or
- (10) uses conversion therapy on a minor.

B. Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

- (a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or
- (b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

History: Laws 1989, ch. 51, § 17; 2017, ch. 132, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

The 2017 amendment, effective June 16, 2017, prohibited the use of conversion therapy on a minor, provided that the board of social work examiners may deny, revoke

or suspend a license held or applied for under the Social Work Practice Act if the licensee uses conversion therapy on a minor, and defined certain terms as used in this section; in Subsection A, added Paragraph A(10); in Subsection B, after "payment of costs for", deleted "such" and added "the"; and added Subsection C.

61-31-18. Impaired social workers. (Repealed effective July 1, 2032.)

The license of any social worker to practice in this state shall be subject to restriction, suspension or revocation in case of inability of the licensee to practice social work with reasonable skill and safety to clients by reason of one or more of the following:

- A. mental disability; or
- B. habitual or excessive use of controlled substances, as defined in the Controlled Substances Act [30-31-1 NMSA 1978], or alcohol.

History: Laws 1989, ch. 51, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

61-31-19. Impaired social workers' program. (Repealed effective July 1, 2032.)

A. The board shall establish a process by which social workers who may be impaired because of a mental disability or habitual or excessive use of controlled substances or alcohol may seek rehabilitation. The intent of the process is to provide impaired social workers the opportunity to voluntarily enter a treatment program as an alternative to disciplinary action, while providing adequate safeguards to the public.

B. The board shall appoint evaluation advisory committees as appropriate to the specific disability of a social worker. Each advisory committee shall be composed of at least three members. One member of an advisory committee shall be a licensed physician, one a certified psychologist or a licensed psychiatrist and one licensed to practice social work in New Mexico. No member of an advisory committee shall be a member of the board.

C. An advisory committee shall function under the direction of the board and in accordance with regulations of the board. The regulations shall include directions to the advisory committee to:

- (1) develop criteria for admission to and continuance in a treatment program for board approval;
- (2) review complaints against a licensed social worker involving habitual or excessive use of controlled substances or alcohol;
- (3) review voluntary requests of each social worker seeking admission to a treatment program as an alternative to disciplinary action;
- (4) develop and submit to the board for approval a written treatment agreement setting forth the requirements that shall be met by the social worker and the conditions under which the treatment program may be successfully completed or terminated;
- (5) recommend to the board in favor of or against an individual social worker's admission into or release from a treatment program;
- (6) receive and review all reports regarding an individual social worker's progress in treatment and recovery;
- (7) report violations to the board; and
- (8) submit statistical reports to the board.

D. Files of social workers referred to an advisory committee and admitted to a treatment program shall be maintained in the office of the board and shall be confidential. Files are not confidential if they contain reports to the board concerning social workers who have not cooperated or complied with treatment agreements, or who have refused to participate in a program after having been accepted for admission into the program or reports used as evidence in a disciplinary proceeding. Such files may be made available to other states' social worker boards or law enforcement agencies upon request to the board if the social worker leaves the state prior to successful completion of the program and shall be subject to discovery by subpoena.

E. Any person who makes a report to the board regarding a social worker suspected of practicing while mentally disabled or under the influence of alcohol or controlled substances or who makes a report of a social worker's progress or lack of progress in a treatment program shall be immune from civil action for defamation or other causes of action resulting from such reports, provided that such reports are made in good faith and with some reasonable basis in fact.

F. After an appropriate treatment period, to be approved by the board, the advisory committee shall refer to the board for formal disciplinary action, including suspension or removal of

license, a social worker who fails to respond to treatment. The board may on its own initiative or at the recommendation of the advisory committee immediately proceed with disciplinary actions against any social worker previously admitted to and released from a treatment program who has subsequently relapsed into a mental disability or abuse of alcohol or a controlled substance.

History: Laws 1989, ch. 51, § 19.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

61-31-20. Provision for hearing. (Repealed effective July 1, 2032.)

The board shall, before taking any disciplinary action, set any matter for a hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978].

History: Laws 1989, ch. 51, § 20.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

61-31-21. Criminal offender's character evaluation. (Repealed effective July 1, 2032.)

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Social Work Practice Act.

History: Laws 1989, ch. 51, § 21.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

61-31-22. Penalties. (Repealed effective July 1, 2032.)

Any person who violates any provision of the Social Work Practice Act is guilty of a misdemeanor.

History: Laws 1989, ch. 51, § 22.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

Cross references. — For sentencing for misdemeanors, see 31-19-1 NMSA 1978.

61-31-23. Repealed.

Repeals. — Laws 2019, ch. 143, § 16 repealed 61-31-23 NMSA 1978, as enacted by Laws 1989, ch. 51, § 23, relating to injunctive proceedings, effective June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on NMSources.com.

61-31-24. Privileged communications. (Repealed effective July 1, 2032.)

A. A licensed social worker shall not be examined without the consent of his client concerning any communication made by the client to him or any advice given to the client in the course of professional employment; nor shall the secretary, stenographer or clerk of a social worker be examined without the consent of his employer concerning any fact, the knowledge of which he has acquired in that capacity; nor shall any person who has participated in any social work practice conducted under the supervision of a person authorized by law to conduct such practice, including group therapy sessions, be examined concerning any knowledge gained during the course of the practice without the consent of the person to whom the testimony sought relates.

B. No licensed social worker may disclose any information he has acquired from a person consulting him in his professional capacity, unless:

(1) he has the written consent of the client or, in the case of death or disability, of his personal representative, any other person authorized to sue or the beneficiary of any insurance policy on his life, health or physical condition;

- (2) such communication reveals the contemplation of a crime or harmful act;
- (3) the client is under the age of sixteen years or an adult who is mentally fragile and the information acquired indicates that the child or adult was the victim or subject of a crime, in which case the social worker may be required to testify fully in relation to the crime in any examination, trial or other proceeding in which the commission of the crime is a subject of inquiry; or
- (4) the person waives the privilege by bringing charges against the social worker.

C. Nothing in this section shall be construed to prohibit a licensed social worker from disclosing information in court hearings concerning matters of adoption, child abuse, child neglect or other matters pertaining to the welfare of children as stipulated in the Children's Code [32A-1-1 NMSA 1978] or to those matters pertaining to citizens protected under the Adult Protective Services Act [27-7-14 NMSA 1978].

History: Laws 1989, ch. 51, § 24.

Delayed repeals. — For delayed repeal of this section, see 61-31-25 NMSA 1978.

ANNOTATIONS

When statutory privilege conflicts with constitutional or court rule privilege. — The supreme court's constitutional power of superintending control over all inferior courts carries with it the inherent power to regulate all pleading, practice and procedure affecting the judicial branch of government; with respect to privileges, if a statutory privilege is not consistent with a rule of the supreme court, the statutory privilege is not given effect and the constitutional or court rule privilege prevails. *State v. Strauch*, 2015-NMSC-009, rev'g 2014-NMCA-020.

The provisions of this section that arguably create social worker evidentiary privileges cannot prevent court-ordered disclosure of communications that would be mandated by the discovery and evidence rules of the supreme court; consequently, statements made to a social worker by an alleged child abuser in private counseling sessions are not protected from disclosure in a court proceeding as a result of the specific exception to the physician-patient and psychotherapist-patient evidentiary privilege in Rule 11-504(D)(4) NMRA, which provides that no privilege shall apply for confidential communications concerning any material that a social worker is required by law to report

to a public agency. *State v. Strauch*, 2015-NMSC-009, rev'g 2014-NMCA-020.

Applicability of privilege in a child abuse and neglect case was not required to be addressed because the clear language of Rule 11-504 NMRA, this section, and Section 61-9A-27 NMSA 1978 permits disclosure. *State ex rel. Children, Youth & Families Dept.*, 2000-NMCA-035, 128 N.M. 813, 999 P.2d 1045, cert. denied, 129 N.M. 207, 4 P.3d 35.

Recognition of role licensed social workers play in providing treatment to victims of child abuse and neglect would be consistent with the legislature's recognition of the professional nature of their services. *State ex rel. Children, Youth & Families Dept. v. Frank G.*, 2005-NMCA-026, 137 N.M. 137, 108 P.3d 543, *aff'd*, 2006-NMSC-019, 139 N.M. 459, 134 P.3d 746.

Issue not preserved on appeal. — Where defendant argued that the statements he made to social workers, implicating himself in criminal sexual contact with a minor, are privileged, but he did not cite either this section or *Jaffee v. Redmond*, 518 U.S. 1, 135 L. Ed. 2d 337, 116 S. Ct. 1923 (1996), to support that argument in the trial court, he has not preserved the issue and may not raise it in an appellate court. *State v. Neswood*, 2002-NMCA-081, 132 N.M. 505, 51 P.3d 1159, cert. denied, 132 N.M. 551, 52 P.3d 411.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81 Am. Jur. 2d Witnesses §§ 453, 541, 542.
97 C.J.S. Witnesses §§ 252, 254.

61-31-25. Termination of agency life; delayed repeal. (Repealed effective July 1, 2032.)

The board of social work examiners is terminated on July 1, 2031 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Social Work Practice Act until July 1, 2032. Effective July 1, 2032, the Social Work Practice Act is repealed.

History: Laws 1989, ch. 51, § 27; 1996, ch. 51, § 17; 1997, ch. 46, § 19; 2005, ch. 208, § 23; 2015, ch. 119, § 17; 2019, ch. 143, § 10.

The 2019 amendment, effective June 14, 2019, extended the agency life of the board of social work examiners; after the first occurrence of July 1, deleted "2021" and added "2031", and after the second and third occurrences of "July 1," deleted "2022" and added "2032".

The 2015 amendment, effective June 19, 2015, extended the termination date for the social work examiners to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences.

The 1996 amendment, effective March 5, 1996, substituted "1997" for "1995" once and "1998" for "1996" twice in the section.

ARTICLE 32

Funeral Services

- Sec. 61-32-1. Short title. (Repealed effective July 1, 2024.)
- 61-32-2. Purpose. (Repealed effective July 1, 2024.)
- 61-32-3. Definitions. (Repealed effective July 1, 2024.)
- 61-32-4. License required. (Repealed effective July 1, 2024.)
- 61-32-5. Board created. (Repealed effective July 1, 2024.)
- 61-32-6. Board powers. (Repealed effective July 1, 2024.)
- 61-32-7. Board duties. (Repealed effective July 1, 2024.)
- 61-32-8. Inspection; access; counsel. (Repealed effective July 1, 2024.)
- 61-32-9. Requirements for licensure; funeral service practitioner; funeral arranger; embalmer; funeral service intern; direct disposer; conversion of certain licenses; temporary licenses. (Repealed effective July 1, 2024.)
- 61-32-10. Licensure by credentials. (Repealed effective July 1, 2024.)
- 61-32-11. Licensure of establishments; funeral establishments; commercial establishments; direct disposition establishments; crematories. (Repealed effective July 1, 2024.)
- 61-32-12. License; display of license. (Repealed effective July 1, 2024.)
- 61-32-13. Establishments; requirements; temporary licenses. (Repealed effective July 1, 2024.)
- 61-32-14. Funeral service intern; scope of practice; limitations. (Repealed effective July 1, 2024.)
- 61-32-14.1. Repealed.
- 61-32-15. Repealed.
- 61-32-16. Repealed.
- 61-32-17. Direct disposer; scope of practice; limitations. (Repealed effective July 1, 2024.)
- 61-32-17.1. Repealed.

- Sec. 61-32-18. Commercial establishments; scope of practice; limitations. (Repealed effective July 1, 2024.)
- 61-32-19. Cremation; requirements; right to authorize cremation; disposition of cremains. (Repealed effective July 1, 2024.)
- 61-32-19.1. Crematory; scope of practice; limitations. (Repealed effective July 1, 2024.)
- 61-32-20. Embalming. (Repealed effective July 1, 2024.)
- 61-32-21. License renewal. (Repealed effective July 1, 2024.)
- 61-32-22. Inactive status. (Repealed effective July 1, 2024.)
- 61-32-23. Fees and fines. (Repealed effective July 1, 2024.)
- 61-32-24. Disciplinary proceedings; judicial review. (Repealed effective July 1, 2024.)
- 61-32-25. Additional prohibitions. (Repealed effective July 1, 2024.)
- 61-32-26. Fund established. (Repealed effective July 1, 2024.)
- 61-32-27. Criminal offender employment act. (Repealed effective July 1, 2024.)
- 61-32-28. Communications; confidentiality. (Repealed effective July 1, 2024.)
- 61-32-29. Construction. (Repealed effective July 1, 2024.)
- 61-32-30. Criminal penalties. (Repealed effective July 1, 2024.)
- 61-32-30.1. Unlicensed activity; civil penalty. (Repealed effective July 1, 2024.)
- 61-32-30.2. Cease and desist orders; fines; finality; hearings. (Repealed effective July 1, 2024.)
- 61-32-31. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

Recompilations. — Former Chapter 61, Article 29A NMSA 1978 was recompiled as this article by the compiler in 1990 to alphabetize the article headings.

61-32-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 32 NMSA 1978 may be cited as the "Funeral Services Act".

History: 1978 Comp., § 61-32-1, enacted by Laws 1993, ch. 204, § 1; 1999, ch. 284, § 1; 2012, ch. 48, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-1 NMSA 1978, as enacted by Laws 1978, ch. 185, § 1, giving the short title of the Thanatopractice License Law, and § 1 of that act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act and after "cited as the", deleted "Thanatopractice" and added "Funeral Services".

The 1999 amendment, effective June 18, 1999, updated the statutory reference.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Funeral Directors and Embalmers §§ 3 to 28.

Civil liability of undertaker in connection with transportation, burial, or safeguarding of body, 53 A.L.R.4th 360.

Recoverability of compensatory damages for mental anguish or emotional distress for breach of service contract, 54 A.L.R.4th 901.

61-32-2. Purpose. (Repealed effective July 1, 2024.)

In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of the care and disposition of the dead human body, it is necessary to provide laws and regulations to govern the handling and care of the dead

and the sensitivities of those who survive, whether they wish or do not wish rites or ceremonies. The primary responsibility and obligation of the board of funeral services is to protect the public.

History: 1978 Comp., § 61-32-2, enacted by Laws 1993, ch. 204, § 2; 2012, ch. 48, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-2 NMSA 1978, as enacted by Laws 1978, ch. 185, § 2, giving the purpose of

Thanatopractice License Law, and § 2 of that act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the board of thanatopractice to the board of funeral services and in the second sentence, after "board", deleted "of thanatopractice" and added "of funeral services".

61-32-3. Definitions. (Repealed effective July 1, 2024.)

As used in the Funeral Services Act:

- A. "board" means the board of funeral services;
- B. "committal service" means a service at a place of interment or entombment that follows a funeral conducted at another location;
- C. "cremains" means cremated remains;
- D. "cremation" means the reduction of a dead human body by direct flame to a residue that includes bone fragments;
- E. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the cremains;
- F. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;
- G. "department" means the regulation and licensing department;
- H. "direct disposer" means a person licensed to engage solely in providing direct disposition at a direct disposition establishment, licensed pursuant to the Funeral Services Act, as provided in that act;
- I. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a direct disposer performing or arranging a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;
- J. "direct supervision" means that the supervising funeral service practitioner is physically present with and in direct control of the person being trained;
- K. "disposition" means the final disposal of a dead human body, whether it be by earth interment, above-ground interment or entombment, cremation, burial at sea or delivery to a medical school, when the medical school assumes complete responsibility for the disposal of the body following medical study;
- L. "embalmer" means a person licensed to engage in embalming and preparing a dead human body for funeral service at a funeral establishment that is licensed pursuant to the Funeral Services Act;
- M. "embalming" means the disinfection, preservation and restoration, when possible, of a dead human body by a licensed funeral service practitioner, licensed embalmer or a licensed funeral service intern under the supervision of a licensed funeral service practitioner;
- N. "ennichement" means interment of cremains in a niche in a columbarium, whether in an urn or not;
- O. "entombment" means interment of a casketed body or cremains in a crypt in a mausoleum;
- P. "establishment" means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as being conducted and includes commercial establishments that provide for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments or a school of medicine;
- Q. "funeral" means a period following death in which there is an organized, purposeful, time-limited, group-centered ceremony or rite, whether religious or not, with the body of the deceased present;
- R. "funeral arranger" means a person licensed to engage in arrangements and directing of funeral services at a funeral establishment that is licensed pursuant to the Funeral Services Act;

S. "funeral merchandise" means that personal property offered for sale in connection with the transportation, funeralization or disposition of a dead human body, including the enclosure into which a dead human body is or cremains are directly placed, and excluding mausoleum crypts, interment enclosures preset in a cemetery and columbarium niches;

T. "funeral service intern" means a person licensed to be in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

U. "funeral service practitioner" means a person licensed to engage in the practice of funeral service at a funeral establishment or commercial establishment that is licensed pursuant to the Funeral Services Act;

V. "funeral services" means those immediate post-death activities related to a dead human body and its care and disposition, whether with or without rites or ceremonies; but "funeral services" does not include disposition of the body by a school of medicine following medical study;

W. "general supervision" means that the supervising funeral service practitioner is not necessarily physically present in the establishment with the person being trained but is available for advice and assistance;

X. "graveside service" means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

Y. "jurisprudence examination" means an examination prescribed by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Funeral Services Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act [Chapter 24, Article 14 NMSA 1978];

Z. "licensee in charge" means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees; or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

AA. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

BB. "memorial service" means a gathering of persons for recognition of a death without the presence of the body of the deceased;

CC. "practice of funeral service" means those activities allowed under the Funeral Services Act by a funeral service practitioner, funeral arranger, embalmer or funeral service intern; and

DD. "pulverization" means the process that reduces cremains to a granular substance.

History: 1978 Comp., § 61-32-3, enacted by Laws 1993, ch. 204, § 3; 1995, ch. 158, § 1; 1999, ch. 284, § 2; 2012, ch. 48, § 5; 2019, ch. 164, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws, 1993, ch. 204, § 32 repealed former 61-32-3 NMSA 1978, as amended by Laws 1983, ch. 137, § 1, containing definitions, and § 3 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, defined "embalmer" and "funeral arranger", and revised the definitions of "embalming" and "practice of funeral service", as used in the Funeral Services Act; added new Subsection L and redesignated former Subsections L through P as Subsections M through Q, respectively; in Subsection M, after "practitioner", added "licensed embalmer"; added new Subsection R and redesignated former Subsections Q through BB as Subsections S through DD, respectively; and in Subsection CC, after "practitioner", added "funeral arranger, embalmer".

The 2012 amendment, effective July 1, 2012, changed the name of the act; eliminated definitions to conform to the conversion of associate funeral services practitioner and assistant funeral services practitioner licenses to intern licenses; in the introductory sentence and in Subsections H, R, S, W and AA substituted "Funeral Services Act" for "Thanatopractice Act"; deleted former Subsection A, which defined "assistant funeral services practitioner"; deleted former Subsection B, which defined "associate

funeral services practitioner", in Subsection A, after "board of", deleted "thanatopractice" and added "funeral services"; in Subsection I, after "quickly as possible, without", added "a direct disposer performing or arranging"; in Subsection L, after "body by a licensed funeral service practitioner", deleted "a licensed associate funeral service practitioner"; added Subsection T; in Subsection AA, after "funeral service practitioner", deleted "associate funeral service practitioner, assistant funeral service practitioner"; and deleted former Subsection DD, which defined "thanatopractice".

The 1999 amendment, effective June 18, 1999, inserted "at a funeral establishment or commercial establishment, licensed pursuant to the Thanatopractice Act" in Subsections A and B; substituted "that act" for "the Thanatopractice Act" in Subsections A, B, and J; added Subsections D, O, and P; redesignated former Subsections D to M and N to AA as Subsections E to N and Q to DD, respectively; substituted "supervising funeral service practitioner" for "supervisor" in Subsections L and V; substituted "includes bone fragments" for "may include bone fragments" in Subsection F; inserted "at a direct disposition establishment, licensed pursuant to the Thanatopractice Act" in Subsection J; substituted "direct control of the person being trained" for "control of the person being supervised" in Subsection L; deleted "or release of custody of the body to the family or personal representative or other legal representative" from the end of Subsection M; deleted "a licensed assistant funeral

service practitioner" preceding "or a licensed funeral service intern" in Subsection N; substituted "licensed to be" for "licensed pursuant to the Thanatopractice Act who is" and added the language beginning "at a funeral establishment" in Subsection T; deleted "by the board" following "person licensed" and substituted the language beginning "at a funeral establishment" for language which specifically described funeral establishments in Subsection U; substituted "in the establishment with the person being trained" for "with the person being supervised" in Subsection V; deleted "and graded" preceding "by the board" in

Subsection X; and substituted "post-death" for "post-dead" in Subsection DD.

The 1995 amendment, effective April 5, 1995, substituted "a dead human body" for "the dead body" in Subsection F, and in Subsection M, added all the language following "dead human body".

ANNOTATIONS

Salesmen of insurance funding funeral plans. — A person licensed to sell life insurance specifically designed to fund funeral plans need not be licensed to practice funeral service. 1987 Op. Att'y Gen. No. 87-60.

61-32-4. License required. (Repealed effective July 1, 2024.)

A. Unless licensed to practice under the Funeral Services Act, a person shall not:

(1) practice as a funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer;

(2) use the title or make any representation as being a funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer; or

(3) maintain, manage or operate a funeral establishment, a commercial establishment, a direct disposition establishment or a crematory.

B. A person who engages in the practice or acts in the capacity of a funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer in this state, with or without a New Mexico license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the Funeral Services Act.

C. A person who maintains, manages or operates a funeral establishment, commercial establishment, direct disposition establishment or crematory in this state, with or without a New Mexico establishment or crematory license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the Funeral Services Act.

History: 1978 Comp., § 61-32-4, enacted by Laws 1993, ch. 204, § 4; 2003, ch. 420, § 1; 2012, ch. 48, § 6; 2019, ch. 164, § 2.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-4 NMSA 1978, as enacted by Laws 1978, ch. 185, § 4, creating the state board of thanatopractice of the state of New Mexico, and § 4 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, required funeral arrangers and embalmers to be licensed under the Funeral Services Act; in Subsection A, after each occurrence of "funeral service practitioner", added "funeral arranger, embalmer".

The 2012 amendment, effective July 1, 2012, changed the name of the act; eliminated references to former licenses that have been converted to intern licenses; in Subsections A, B and C, substituted "Funeral Services Act" for "Thanatopractice Act"; in Subsection A, in Paragraph (1), after "funeral service practitioner", deleted "associate

funeral service practitioner, assistance funeral service practitioner" and in Paragraph (2), after "use the title to", deleted "represent himself as" and added "make any representation as being", after "representation as being a funeral service practitioner", deleted "associate funeral service practitioner, assistance funeral service practitioner", and after "practice as a funeral service practitioner", deleted "associate funeral service practitioner, assistance funeral service practitioner"; and in Subsection B, after "funeral service practitioner", deleted "associate funeral service practitioner, assistance funeral service practitioner".

The 2003 amendment, effective July 1, 2003, inserted the Subsection A designation; redesignated part of former Subsection A and Subsections B and C as Paragraphs A(1) to (3); inserted "assistant funeral service practitioner" following "funeral service practitioner" in Paragraph A(2); inserted "a" following "a commercial establishment" in Paragraph A(3); and added present Subsections B and C.

61-32-5. Board created. (Repealed effective July 1, 2024.)

A. There is created the "board of funeral services".

B. The board is administratively attached to the department.

C. The board consists of six members. Three members shall be funeral service practitioners who have been licensed in this state for at least five years; two members shall represent the public and shall not have been licensed for the practice of funeral service or direct disposition in this state or any other jurisdiction and shall not ever have had any financial interest, direct or indirect, in any funeral, commercial or direct disposition establishment or crematory; and one member shall be a licensed direct disposer or health care practitioner from the office of the state medical investigator who has been licensed in this state for at least five years.

D. Members of the board shall be appointed by the governor for terms of four years. Each member shall hold office until the member's successor is duly qualified and appointed. Vacancies shall be filled for an unexpired term in the same manner as original appointments.

E. Members of the board shall be reimbursed per diem and mileage as provided in the Per Diem and Mileage Act [Chapter 10, Article 8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

F. A simple majority of the board members currently serving constitutes a quorum.

G. The board shall hold at least two regular meetings each year and shall meet at such other times as it deems necessary.

H. No board member shall serve more than two full consecutive terms. The board shall recommend removal of any board member who has three unexcused absences from properly noticed meetings within a twelve-month period and may recommend removal of a board member for any other just cause.

I. The board shall elect a chair and other officers as deemed necessary to administer its duties.

History: 1978 Comp., § 61-32-5, enacted by Laws 1993, ch. 204, § 5; 1999, ch. 284, § 3; 2012, ch. 48, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-5 NMSA 1978, as enacted by Laws 1978, ch. 185, § 5, concerning board duties and powers, and § 5 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the board; required that a health care practitioner be from the office of the state medical investigator; in Subsection A, after "board of", deleted "thanatopractice" and added "funeral services"; in Subsection C, in the second sentence, after "health care practitioner", added the

phrase "from the office of the state medical investigator"; and in Subsection E, after "shall be reimbursed", added "per diem and mileage".

The 1999 amendment, effective June 18, 1999, in the first sentence of Subsection D, deleted "staggered" preceding "terms of four years" and deleted language at the end, which stated that board members appointed and serving under prior law at the effective date of the Thanatopractice Act shall serve out the terms for which they were appointed, and in Subsection H, substituted the last sentence for language at the end of the first sentence, which read, "and any member failing to attend, after proper notice, three meetings shall automatically be recommended for removal as a board member unless excused for reasons set forth in board regulations".

61-32-6. Board powers. (Repealed effective July 1, 2024.)

A. In addition to any other authority provided by law, the board has the power to:

- (1) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] that are necessary to carry out the provisions of the Funeral Services Act;
- (2) promulgate rules implementing continuing education requirements;
- (3) conduct hearings upon charges relating to the discipline of licensees and take administrative actions pursuant to the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];
- (4) except as provided in Section 61-1-34 NMSA 1978, establish reasonable fees to carry out the provisions of the Funeral Services Act;
- (5) provide for investigations necessary to determine violations of the Funeral Services Act;
- (6) establish committees as the board deems necessary for carrying out the provisions of the Funeral Services Act;
- (7) apply for injunctive relief to enforce the provisions of the Funeral Services Act or to restrain any violation of that act; and
- (8) conduct criminal background checks on applicants for licensure.

B. No action or other legal proceedings for damages shall be instituted against the board, any board member or employee of the board for any act performed in good faith and in the intended

performance of any power or duty granted under the Funeral Services Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

History: 1978 Comp., § 61-32-8, enacted by Laws 1993, ch. 204, § 6; 1999, ch. 284, § 4; 2012, ch. 48, § 8; 2017, ch. 52, § 16; 2021, ch. 92, § 16; 2022, ch. 39, § 100.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-6 NMSA 1978, as enacted by Laws 1978, ch. 185, § 6, concerning the secretary of the board, and § 6 of the act enacted a new section, effective June 18, 1993.

The 2022 amendment, effective May 18, 2022, clarified that the board of funeral services is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; and in Subsection A, Paragraph A(1), deleted "adopt in accordance with the provisions of the Uniform Licensing Act, and file" and added "promulgate rules", in Paragraph A(2), deleted "adopt" and added "promulgate", and in Paragraph A(3), after "pursuant to", deleted "Section 61-1-3 NMSA 1978" and added "the Uniform Licensing Act".

The 2021 amendment, effective June 18, 2021, provided an exception, related to the waiver of fees for military service members and veterans, to the board of funeral service's power to establish fees to carry out the provisions of the Funeral Services Act; and in Subsection A, Paragraph A(4), added "except as provided in Section 61-1-34 NMSA 1978".

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-6 NMSA 1978, as enacted by

Laws 1978, ch. 185, § 6, concerning the secretary of the board, and § 6 of the act enacted a new section, effective June 18, 1993.

The 2017 amendment, effective June 16, 2017, removed the provision which provided the board of funeral services the authority to impose a fine not to exceed five thousand dollars (\$5,000) and to assess costs for each violation of the Funeral Services Act; in Subsection A, in Paragraph A(7), after the semicolon, added "and", and deleted Paragraph A(8) and redesignated former Paragraph A(9) as Paragraph A(8).

The 2012 amendment, effective July 1, 2012, changed the name of the act and the thanatopractice fund; in Subsection A, in Paragraphs (1) and (4) through (7) and in Subsection B, substituted "Funeral Services Act" for "Thanatopractice Act"; and in Subsection A, in Paragraph (1), after "rules", deleted "and regulations" and in Paragraph (8), after "deposited in the", deleted "thanatopractice" and added "funeral services".

The 1999 amendment, effective June 18, 1999, in Subsection A, substituted "pursuant to Section 61-1-3 NMSA 1978" for "including license denial, suspension or revocation, or the issuance of a fine, reprimand or other remedial action" in Paragraph (3); deleted former Paragraph (8), which set out the board's power to take administrative action with regard to the Thanatopractice Act; redesignated former Paragraph (9) as Paragraph (8), and in that paragraph, inserted "for each violation"; and added Paragraph (9).

61-32-7. Board duties. (Repealed effective July 1, 2024.)

The board shall:

- A. administer the provisions of the Funeral Services Act;
- B. provide for the examination, licensing and renewal of applicants or licensees; and
- C. provide for the inspection of establishments and crematories.

History: 1978 Comp., § 61-32-7, enacted by Laws 1993, ch. 204, § 7; 2012, ch. 48, § 9.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-7 NMSA 1978, as amended by Laws 1983, ch. 137, § 2, providing for an inspector and

board representation, and § 7 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act and in Subsection A, after "provisions of the"; deleted "Thanatopractice" and added "Funeral Services".

61-32-8. Inspection; access; counsel. (Repealed effective July 1, 2024.)

A. Inspection of establishments and crematories, including all records, financial or otherwise, is authorized during regular business hours. Acceptance of a license shall include permission for the board or its designee to enter the premises without legal process.

B. An establishment or crematory shall maintain business records required by law or rule at the establishment or crematory.

C. The board shall be represented by the attorney general. The board may employ special counsel, upon approval of the attorney general, to review and prosecute cases of consumer complaints against any person, establishment or crematory licensed pursuant to the Funeral Services Act. Payment for the services shall be by the board.

History: 1978 Comp., § 61-32-8, enacted by Laws 1993, ch. 204, § 8; 1999, ch. 284, § 5; 2003, ch. 420, § 2; 2012, ch. 48, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-8 NMSA 1978, as enacted by Laws 1978, ch. 185, § 8, concerning applicability of the Criminal Offender Employment Act, 28-2-1 to 28-2-6 NMSA 1978, and § 8 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act and in Subsection B, deleted "Thanatopractice" and added "Funeral Services".

The 2003 amendment, effective July 1, 2003, rewrote Subsection B.

The 1999 amendment, effective June 18, 1999, deleted "or through prior arrangement" following "business hours" in Subsection A, added Subsection B, redesignated former Subsection B as Subsection C, and in that subsection, substituted the language beginning "upon approval of the attorney general" for "whose services shall be paid by the board upon the approval of the attorney general".

61-32-9. Requirements for licensure; funeral service practitioner; funeral arranger; embalmer; funeral service intern; direct disposer; conversion of certain licenses; temporary licenses. (Repealed effective July 1, 2024.)

A. A license to practice as a funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

- (1) is at least eighteen years of age;
- (2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period, the applicant shall have assisted in the embalming of at least fifty bodies, making of at least fifty funeral arrangements and the directing of at least fifty funerals;
- (3) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules;
- (4) has successfully completed both the arts and science sections of the national board examination administered by the international conference of funeral service examining boards;
- (5) has not been convicted of unprofessional conduct or incompetency; and
- (6) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

B. A license to practice as a funeral arranger shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

- (1) is at least eighteen years of age;
- (2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period, the applicant shall have assisted in the making of at least fifty funeral arrangements and the directing of at least fifty funerals;
- (3) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules;
- (4) has successfully completed the arts section of the national board examination administered by the international conference of funeral service examining boards;
- (5) has not been convicted of unprofessional conduct or incompetency; and
- (6) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

C. A license to practice as an embalmer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

- (1) is at least eighteen years of age;
- (2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period, the applicant shall have assisted in the embalming of at least fifty bodies;

- (3) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules;
- (4) has successfully completed the science section of the national board examination administered by the international conference of funeral service examining boards;
- (5) has not been convicted of unprofessional conduct or incompetency; and
- (6) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

D. A license to practice as a funeral service intern shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

- (1) is at least eighteen years of age;
- (2) has graduated from high school or the equivalent;
- (3) has submitted proof of employment and supervision as required by board rules. Except as may be allowed by board rule, a license as a funeral service intern is issued only for a specific funeral establishment or an establishment that is part of a multi-establishment enterprise;
- (4) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules; and
- (5) has not been convicted of unprofessional conduct or incompetency.

E. A license to practice as a direct disposer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

- (1) is at least eighteen years of age;
- (2) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education and recognized by the United States government;
- (3) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and
- (4) has not been convicted of unprofessional conduct or incompetency.

F. On and after July 1, 2012, the board shall not issue a new license that was formerly designated an "assistant funeral services practitioner" or "associate funeral services practitioner" license under a version of the Funeral Services Act in effect on June 30, 2012. A person holding one of these licenses that is valid as of June 30, 2012 shall be considered as holding a valid, renewable funeral services intern license subject to the general supervision of a licensed funeral services practitioner pursuant to the Funeral Services Act.

G. The board may adopt by rule requirements for issuing a temporary license that will be valid until the next scheduled board meeting.

History: 1978 Comp., § 61-32-9, enacted by Laws 1993, ch. 204, § 9; 1999, ch. 284, § 6; 2003, ch. 420, § 3; 2012, ch. 48, § 11; 2019, ch. 164, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-9 NMSA 1978, as amended by Laws 1989, ch. 187, § 1, concerning the issuance of licenses, and § 9 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, provided the requirements for licensure for funeral arrangers and embalmers; in the section heading, after "practitioner", added "funeral arranger; embalmer"; in Subsection A, added new Paragraph A(4) and redesignated former Paragraphs A(4) and A(5) as Paragraphs A(5) and A(6), respectively; and added new Subsections B and C and redesignated former Subsection B through E as Subsections D through G, respectively.

The 2012 amendment, effective July 1, 2012, changed the educational requirements for licensure as a funeral service practitioner and a direct disposer; permitted issuance of a funeral service intern license for a multi-establishment enterprise; converted assistant funeral services practitioner and associate funeral services practitioner licenses to intern licenses; in the title, after "direct disposer", deleted "associate funeral service practitioner;" and added "conversion of certain licenses"; in Subsection A, deleted former Paragraphs (5) and (6), which required an applicant for a funeral service practitioner license to have graduated from an accredited institution and to have completed at least sixty semester hours of academic and professional instruction in an institution of higher education or to have passed an examination, and added Paragraph (5); in Subsection B, in Paragraph (3), in the second sentence, after "funeral service intern is", deleted "not ambulatory and is", after "issued", added "only", and after "establishment", deleted "only" and added the

remainder of the sentence; in Subsection C, deleted former Paragraph (2) which required an applicant for a direct disposer license to have graduated from high school or the equivalent and added Paragraph (2); deleted former Subsection D, which provided for an assistant funeral service practitioner license; deleted former Subsection E, which provided for an associate funeral service practitioner license; and added Subsection D.

The 2003 amendment, effective July 1, 2003, substituted "making of at least fifty funeral arrangements and" for "and assisted in the" following "least fifty bodies" in Paragraph A(2); and added Subsection F.

The 1999 amendment, effective June 18, 1999, in Subsection A, deleted "to be a funeral service practitioner" in Paragraph (3), deleted "of thanatopractice" following "required by the board" in Paragraph (6), deleted language at the end of Paragraph (6), which provided that a funeral service intern need not satisfy provisions of Paragraph (5)

if he has successfully completed examinations required by the board for practice as an associate funeral service practitioner and funeral service practitioner; in Subsection B, substituted "board rules" for "the board" in Paragraph (3) and added Paragraphs (4) and (5); in Subsection D, substituted "June 18, 1993" for "the effective date of the Thanatopractice Act"; and in Subsection E, deleted former Paragraphs (2) to (4), relating to satisfactory evidence that a person has served as a licensed funeral service intern for not less than twelve months while under the supervision of a licensed funeral service practitioner, has graduated from high school or the equivalent, and has successfully completed at least sixty semester hours of academic and professional instruction in an accredited college or university, redesignated former Paragraphs (5) and (6) as Paragraphs (2) and (3), and deleted "to be an associate funeral service practitioner" preceding "prescribed" in Paragraph (2).

61-32-10. Licensure by credentials. (Repealed effective July 1, 2024.)

After successful completion of a jurisprudence examination, the board may license an applicant as a funeral service practitioner, funeral arranger or embalmer; provided the applicant possesses a valid license or its equivalent for the practice of funeral service issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation, and provided the applicant presents proof that the applicant is currently licensed in good standing in a jurisdiction that has standards for licensure that are at least equal to those for licensure in New Mexico as required by the Funeral Services Act.

History: 1978 Comp., § 61-32-10, enacted by Laws 1993, ch. 204, § 10; 1999, ch. 284, § 7; 2003, ch. 420, § 4; 2019, ch. 164, § 4.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-10 NMSA 1978, as enacted by Laws 1978, ch. 185, § 10, limiting the practice of funeral service, and § 10 enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, provided that the board of funeral services may license an applicant as a funeral service practitioner, funeral arranger, or embalmer if the applicant presents proof that the applicant is currently licensed in good standing in another jurisdiction; after "provided the applicant", deleted "has actively practiced five out of the last ten years in another state,

territory or foreign nation as a licensed funeral service practitioner, or its equivalent" and added "presents proof that the applicant is currently licensed in good standing in a jurisdiction that has standards for licensure that are at least equal to those for licensure in New Mexico as required by the Funeral Services Act".

The 2003 amendment, effective July 1, 2003, deleted "has met educational requirements equal to or exceeding those established pursuant to the Thanatopractice Act or" following "provided the applicant".

The 1999 amendment, effective June 18, 1999, substituted "equal to" for "substantially equivalent to" near the middle and "actively practiced five out of the last ten years in another state, territory or foreign nation" for "at least five consecutive years experience in another state or territory" near the end.

61-32-11. Licensure of establishments; funeral establishments; commercial establishments; direct disposition establishments; crematories. (Repealed effective July 1, 2024.)

A. Funeral establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice of funeral service and shall comply with the following minimum requirements:

(a) a chapel shall be present in which funerals may be conducted;

(b) a display room shall be present for displaying caskets and other funeral merchandise; and

(c) a preparation room shall be present with necessary drainage and ventilation and necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition or transportation; and

(3) a license shall not be issued or renewed by the board unless the establishment is in compliance with the Funeral Services Act and board rules.

B. Commercial establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice allowed for a commercial establishment and shall comply with the following minimum requirements:

(a) a preparation room shall be present with the necessary drainage and ventilation and necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition and transportation; and

(b) an office shall be present for conducting business; and

(3) a license shall not be issued or renewed by the board unless the establishment is in compliance with the Funeral Services Act and board rules.

C. Direct disposition establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice allowed for a direct disposer and shall comply with the following minimum requirements:

(a) a room shall be present with necessary drainage and ventilation for housing a refrigeration unit;

(b) a refrigeration unit, thermodynamically controlled with a minimum storage area of twelve and one-half cubic feet per body, shall be present for sheltering of dead human bodies prior to burial or other disposition or transportation;

(c) an office shall be present for conducting business;

(d) necessary supplies for safely handling unembalmed dead human bodies; and

(e) if funeral merchandise is made available, a display room shall be present for displaying caskets and other funeral merchandise; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Funeral Services Act and board rules.

D. Crematory licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the crematory shall be maintained at a specific location, including a funeral, commercial or direct disposition establishment, primarily devoted to the practice allowed for a crematory and shall comply with the following minimum requirements:

(a) a room shall be present with necessary ventilation for housing a cremation retort;

(b) a cremation retort shall be present for cremating dead human bodies; and

(c) a unit to pulverize cremated dead human bodies shall be present; and

(3) no license shall be issued or renewed by the board unless the crematory is in compliance with the Funeral Services Act and board rules.

E. The board may adopt by rule additional requirements in the interest of public health, safety and welfare.

History: 1978 Comp., § 61-32-11, enacted by Laws 1993, ch. 204, § 11; 1999, ch. 284, § 8; 2003, ch. 420, § 5; 2012, ch. 48, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-11 NMSA 1978, as enacted by Laws 1978, ch. 185, § 11, limiting the practice of direct disposition, and § 11 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act and in Paragraph (3) of Subsections A,

B, C and D substituted "Funeral Services Act" for "Thanatopractice Act".

The 2003 amendment, effective July 1, 2003, substituted "necessary drainage and ventilation and" for "the" following "be present with" in Subparagraph A(2)(c); substituted "a license shall not" for "no license shall" at the beginning of Paragraphs A(3) and B(3); substituted "comply with the following minimum requirements" for "have" at the end of Paragraph B(2); added the Subparagraph B(2)(a) designation; in Subparagraph B(2)(a), inserted "shall be present" near the beginning, inserted "drainage and ventilation and necessary" preceding "instruments and

supplies"; added Subparagraph B(2)(b); substituted "allowed for a direct disposer and shall comply with the following minimum requirements" for "of direct disposition and shall maintain" at the end of Paragraph C(2); rewrote Subparagraph C(2)(a); deleted former Subparagraph C(2)(b) which read: "necessary drainage and ventilation"; substituted "shall be present for sheltering of dead human bodies prior to burial or other disposition or transportation" for "for sheltering prior to disposition and" at the end of present Subparagraph C(2)(b); added present Subparagraphs C(2)(c) and (e); substituted "primarily devoted

to the practice allowed for a crematory and shall comply with the following minimum requirements" for "and shall have appropriate facilities and equipment devoted to cremation and pulverization" at the end of Paragraph D(2); and added Subparagraphs D(2)(a) to (c) and Subsection E.

The 1999 amendment, effective June 18, 1999, deleted "including specific sanitary or physical requirements for licensure" from the end of Subsections A(3), B(3), C(3), and D(3).

61-32-12. License; display of license. (Repealed effective July 1, 2024.)

A. Initial licenses shall be issued for the remainder of the year in which the license is granted, as established by rule.

B. A license issued by the board shall at all times be posted in the establishment or crematory in a conspicuous place.

History: 1978 Comp., § 61-32-12, enacted by Laws 1993, ch. 204, § 12.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-12 NMSA 1978, as amended by Laws 1989, ch. 187, § 2, concerning license renewal and revival, and § 12 of the act enacted a new section, effective June 18, 1993.

61-32-13. Establishments; requirements; temporary licenses. (Repealed effective July 1, 2024.)

A. Each establishment shall have a full-time funeral service practitioner; provided the establishment license is a privilege granted to the person to whom it is issued and is not transferable to other owners or operators or to another location than that designated on the license. Whenever an establishment no longer employs or otherwise has a full-time licensee in charge, the establishment shall immediately cease the practice of funeral service or direct disposition and the person to whom the establishment license is granted shall immediately return the establishment license to the board by certified mail, return receipt requested, or by another delivery service that provides a means of tracking an item in its delivery system.

B. The board may adopt by rule special requirements for multi-establishment enterprises where the establishments are located within fifty miles of each other and wish to share a licensee in charge.

C. The board may adopt by rule the requirements for reapplication or reinspection.

D. The board may adopt by rule requirements for issuing a temporary establishment or crematory license that will be valid until the next scheduled board meeting.

History: 1978 Comp., § 61-32-13, enacted by Laws 1993, ch. 204, § 13; 1999, ch. 284, § 9; 2012, ch. 48, § 13.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-13 NMSA 1978, as enacted by Laws 1978, ch. 185, § 13, concerning licensure under prior law, and § 13 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, required establishments that no longer employ a full-time funeral

service practitioner to cease the practice of funeral service and direct disposition and to return the establishment license to the board; in Subsection A, in the first sentence, after "full-time", deleted "licensee in charge" and added "funeral service practitioner" and added the last sentence; and in Subsection B, after "special requirements for", deleted "multi-unit establishment that" and added "multi-establishment enterprises where the establishments".

The 1999 amendment, effective June 18, 1999, inserted "provided" in Subsection A, and added Subsection D.

61-32-14. Funeral service intern; scope of practice; limitations. (Repealed effective July 1, 2024.)

A. A funeral service intern does not have the rights and duties of a funeral service practitioner and is only subordinate to the funeral service practitioner. The scope of what a funeral service

intern is permitted to do depends on the activity and the experience of the funeral service intern, provided that a funeral service intern:

(1) may make arrangements only under the direct supervision of a licensed funeral service practitioner. After the completion of fifty arrangements under direct supervision, the funeral service intern may request approval from the board to make arrangements under the general supervision of a licensed funeral service practitioner;

(2) may embalm or otherwise prepare dead human bodies for disposition only under the direct supervision of a licensed funeral service practitioner. After the funeral service intern has assisted with the embalming of at least fifty bodies under direct supervision, the funeral service intern may request approval from the board to embalm under the general supervision of a licensed funeral service practitioner;

(3) may direct a funeral, committal service, graveside service or memorial service only under the direct supervision of a licensed funeral service practitioner. After the funeral service intern has directed at least fifty services under direct supervision, the funeral service intern may request approval from the board to direct such services under the general supervision of a licensed funeral service practitioner; and

(4) shall at no time act under the general supervision of a funeral service practitioner until he is notified in writing of board approval to so act.

B. A funeral service intern shall be employed by and receive training at only one establishment. The board may adopt rules that will allow training at more than one establishment under special circumstances.

C. Any funeral service intern's change of employment shall be reported to the board in writing within thirty days of the change. A change of employment that is not reported shall cause the period worked at the new establishment not to count as time served toward completion of the internship. It is the responsibility of the funeral service intern and the licensee in charge to report changes of employment.

D. A funeral service intern may be under the supervision of more than one funeral service practitioner at the establishment at which he is employed, provided that the board has received notice in writing prior to any changes in supervision. The board may adopt rules specifying the maximum number of persons that may be supervised by a funeral service practitioner.

E. Each funeral service intern shall report to the board quarterly, upon forms provided by the board, showing the work that has been completed during the preceding three months. All quarterly reports are due in the board office within thirty days of the close of the quarter. If a report is not received by the date due, the work completed during the reporting period shall not be counted when the board tabulates requirements for general supervision or for licensure as a funeral service practitioner.

F. Once a funeral service intern is under the general supervision of a funeral service practitioner, the funeral service intern need not submit to the board the quarterly reports required in this section.

History: 1978 Comp., § 61-32-14, enacted by Laws 1993, ch. 204, § 14; 1999, ch. 284, § 10.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-14 NMSA 1978, as amended by Laws 1989, ch. 187, § 3, concerning assistant funeral service practitioners, and § 14 of the act enacted a new section, effective June 18, 1993.

The 1999 amendment, effective June 18, 1999, added the last sentence in Subsection D, deleted former Subsection E, which read "A funeral service intern shall be employed a minimum average of thirty hours per week by the establishment. Proof of employment hours shall be provided to the board upon request", and redesignated former Subsections F and G as Subsections E and F.

61-32-14.1. Repealed.

Repeals. — Laws 1993, ch. 204, § 32 repealed 61-32-14.1 NMSA 1978, as amended by Laws 1989, ch. 187, § 4, concerning associate funeral service practitioners, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on NMSAOneSource.com.

61-32-15. Repealed.

Repeals. — Laws 2012, ch. 48, § 26 repealed 61-32-15 NMSA 1978, as enacted by Laws 1993, ch. 204, § 15, relating to associate funeral service practitioners limitations,

effective July 1, 2012. For provisions of former section, see the 2011 NMSA 1978 on *NMOneSource.com*.

61-32-16. Repealed.

Repeals. — Laws 2012, ch. 48, § 27 repealed 61-32-16 NMSA 1978, as enacted by Laws 1993, ch. 204, § 16, relating to assistant funeral service practitioners scope of

practice and limitations, effective July 1, 2012. For provisions of former section, see the 2011 NMSA 1978 on *NMOneSource.com*.

61-32-17. Direct disposer; scope of practice; limitations. (Repealed effective July 1, 2024.)

A. Except as otherwise provided in the Funeral Services Act, a direct disposer may transport and dispose of a dead human body and participate in any rites or ceremonies after final disposition of the body.

B. Prior to interment, entombment or other final disposition of the body, a direct disposer shall not:

- (1) participate in any rites or ceremonies in connection with the final disposition of the body;
- (2) provide facilities for any such rites or ceremonies; and
- (3) have the body embalmed unless embalming is required by the place of disposition.

History: 1978 Comp., § 61-32-17, enacted by Laws 1993, ch. 204, § 17; 1995, ch. 158, § 2; 1999, ch. 284, § 11; 2012, ch. 48, § 14.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-17 NMSA 1978, as enacted by Laws 1978, ch. 185, § 17, concerning direct disposition establishment permits, and § 17 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act and in Subsection A, after "provided in the", deleted "Thanatopractice" and added "Funeral Services".

The 1999 amendment, effective June 18, 1999, added the Subsection A designation, and in that subsection, added "Except as otherwise provided in the Thanatopractice Act", and deleted the last sentence, which read "In doing so, the direct disposer shall not conduct, direct or provide facilities for a funeral, graveside service, committal service or memorial service, whether public or private, and the body shall not be embalmed prior to the disposition unless embalming is required by the place of disposition"; and added Subsection B.

The 1995 amendment, effective April 5, 1995, substituted "conduct, direct or provide facilities for a" for "provide or participate in a" near the middle.

61-32-17.1. Repealed.

Repeals. — Laws 1993, ch. 204, § 32 repealed 61-32-17.1 NMSA 1978, as enacted by Laws 1983, ch. 137, § 4, concerning crematory permits, effective June 18, 1993.

For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

61-32-18. Commercial establishments; scope of practice; limitations. (Repealed effective July 1, 2024.)

A. The scope of practice of a commercial establishment depends on the entity for whom the commercial establishment is acting as an agent and is subject to the following terms and conditions:

- (1) when acting under the direction of a licensed funeral establishment, the commercial establishment may:
 - (a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation;
 - (b) embalm;
 - (c) provide forwarding services;
 - (d) provide direct disposition; and

(e) arrange for identification of a dead human body by family members only, prior to disposition or transportation;

(2) when acting under the direction of a licensed direct disposition establishment, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation;

(b) embalm only when embalming is required by the place of disposition; and

(c) provide direct disposition; and

(3) when acting under the direction of a school of medicine, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation; and

(b) embalm.

B. A licensed commercial establishment shall not engage in any activity, or act for any entity, not specifically permitted in this section.

C. The licensee in charge shall certify to the board that the establishment will not exceed the scope of practice allowed by law.

History: 1978 Comp., § 61-32-18, enacted by Laws 1993, ch. 204, § 18; 2003, ch. 420, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-18 NMSA 1978, as amended by

Laws 1989, ch. 187, § 6, concerning funeral establishment permits, and § 18 of the act enacted a new section, effective June 18, 1993.

The 2003 amendment, effective July 1, 2003, inserted "minimum" in Subparagraph A(1)(c) and inserted "act" following "any activity, or" in Subsection B.

61-32-19. Cremation; requirements; right to authorize cremation; disposition of cremains. (Repealed effective July 1, 2024.)

A. No cremation shall be performed until all necessary documentation is obtained authorizing the cremation.

B. An adult person may authorize the person's own cremation and the lawful disposition of the person's cremains by:

(1) stating the person's desire to be cremated in a written statement that is signed by the person and notarized or witnessed by two other persons; or

(2) including an express statement in the person's will indicating that the testator desired that the testator's remains be cremated upon the testator's death.

C. A personal representative acting pursuant to the Uniform Probate Code or an establishment or crematory shall comply with a statement made in accordance with the provisions of this section. A statement that conforms to the provisions of this section authorizes a personal representative, establishment or crematory to cremate a decedent's remains, and the permission of next of kin or any other person shall not be required for such authorization. Statements dated prior to June 18, 1993 shall be given effect if they meet this section's requirements.

D. A personal representative, establishment or crematory acting in reliance upon a document executed pursuant to the provisions of this section, who has no actual notice of revocation or contrary indication, is presumed to be acting in good faith.

E. No establishment, crematory or employee of an establishment or crematory or other person that relies in good faith on a statement written pursuant to this section shall be subject to liability for cremating the remains in accordance with the provisions of this section. The written authorization is a complete defense to a cause of action by a person against any other person acting in accordance with that authorization.

F. Except as provided in Subsection G of this section, if a decedent has left no written instructions regarding the disposition of the decedent's remains, the following persons in the order listed shall determine the means of disposition, not to be limited to cremation, of the remains of the decedent:

(1) the surviving spouse;

(2) a majority of the surviving adult children of the decedent;

- (3) the surviving parents of the decedent;
- (4) a majority of the surviving siblings of the decedent;
- (5) an adult person who has exhibited special care and concern for the decedent, who is aware of the decedent's views and desires regarding the disposition of the decedent's body and who is willing and able to make a decision about the disposition of the decedent's body; or
- (6) the adult person of the next degree of kinship in the order named by New Mexico law to inherit the estate of the decedent.

G. If a decedent left no written instructions regarding the disposition of the decedent's remains, died while serving in any branch of the United States armed forces, the United States reserve forces or the national guard and completed a United States department of defense record of emergency data form or its successor form, the person authorized by the decedent to determine the means of disposition on a United States department of defense record of emergency data form shall determine the means of disposition, not to be limited to cremation.

H. A licensed establishment or crematory shall keep an accurate record of all cremations performed and the place of disposition of the cremains for a period of not less than seven years.

I. Cremains may be disposed of by any licensed establishment, crematory authority, cemetery or person having the right to control the disposition of the cremains, or that person's agent, in a lawful manner.

J. Legal forms for cremation authorization shall provide that persons giving the authorization will hold harmless an establishment from any liability for disposing of unclaimed cremains in a lawful manner after a period of one year following the return of the cremains to the establishment.

History: 1978 Comp., § 61-32-19, enacted by Laws 1993, ch. 204, § 19; 1995, ch. 17, § 2; 1999, ch. 284, § 12; 2011, ch. 22, § 3.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Cross references. — For right to authorize cremations, see 24-12A-1 and 24-12A-2 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-19 NMSA 1978, as enacted by Laws 1978, ch. 185, § 19, concerning funeral service practices, and § 19 of the act enacted a new section, effective June 18, 1993.

The 2011 amendment, effective June 17, 2011, authorized a person designated on a United States department of defense record of emergency data form to direct the disposition of the remains of a decedent who left no written instructions and who died while serving in the armed forces, reserve forces or national guard.

The 1999 amendment, effective June 18, 1999, added "disposition of cremains" in the section heading; inserted "and the permission of next of kin or any other person shall not be required for such authorization" in the second sentence of Subsection C; substituted "A licensed establishment or crematory" for "A crematory authority" and "place of disposition of the cremains for a period of not less than seven years" for "disposition of the cremains by the crematory for a period of not less than five years" in Subsection G; and substituted "persons giving the authorization will hold harmless an establishment" for "they will hold harmless an establishment" and inserted "following the return of the cremains to the establishment" in Subsection I.

The 1995 amendment, effective June 16, 1995, substituted "June 18, 1993" for "the effective date of this section" in Subsection C and inserted "adult" in Paragraph F(2).

61-32-19.1. Crematory; scope of practice; limitations. (Repealed effective July 1, 2024.)

A. The scope of practice of a crematory and its crematory authority is limited to cremation of dead human bodies and pulverization of cremains. A crematory and its crematory authority shall act as an agent of licensed funeral, commercial or direct disposition establishments and schools of medicine. A crematory and its crematory authority may:

- (1) engage in transportation of dead human bodies to the crematory; and
- (2) cremate dead human bodies and pulverize cremains.

B. After completion of the cremation process, if a crematory and its crematory authority have not been instructed by its agent to return the cremains to the person that initiated the cremation services contract or to arrange for the interment, entombment or enichement of the cremains, the crematory authority shall return, or cause to be returned, the cremains to the establishment no later than thirty days after the date of cremation.

C. A crematory and its crematory authority shall maintain a system or process that ensures that any dead human body in the crematory's possession can be specifically identified throughout all phases of the cremation process.

D. A crematory shall keep an accurate record of all cremations performed for a period of not less than seven years.

E. The crematory and its crematory authority shall certify to the board that the crematory will not exceed the scope of practice allowed by law.

F. A licensed crematory shall not engage in any activity not specifically permitted in this section.

History: 1978 Comp., § 61-32-19.1, enacted by Laws 1999, ch. 284, § 13; 2003, ch. 420, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

The 2003 amendment, effective July 1, 2003, inserted the second sentence in Subsection A; in Subsection B,

inserted "by its agent to return the cremains to the person that initiated the cremation services contract or" following "not been instructed", and deleted "or person that initiated the cremation services contract" following "to the establishment".

61-32-20. Embalming. (Repealed effective July 1, 2024.)

A. All dead human bodies not disposed of within twenty-four hours after death or release or receipt by the establishment or crematory shall be embalmed in accordance with the Funeral Services Act or stored under refrigeration as determined by board rule, unless otherwise required by regulation of the office of the state medical investigator or the secretary of health or by orders of an authorized official of the office of the state medical investigator, a court of competent jurisdiction or other authorized official.

B. A dead human body shall not be embalmed except by a funeral service practitioner, embalmer or a funeral service intern under the supervision of a funeral service practitioner.

C. When embalming is not required under the provisions of this section, a dead human body shall not be embalmed without express authorization by the:

- (1) surviving spouse or next of kin;
- (2) legal agent or personal representative of the deceased; or
- (3) person assuming responsibility for final disposition.

D. When embalming is not required, and prior to obtaining authorization for the embalming, a dead human body may be washed and other health procedures, including closing of the orifices, may be performed without authorization.

E. When a dead human body is embalmed, the funeral service practitioner or embalmer who embalms the body or the funeral service intern who embalms the body and the funeral service practitioner who supervises the embalming shall, within twenty-four hours after the embalming procedure, complete and sign an embalming case report describing the elapsed time since death, the condition of the remains before and after embalming and the embalming procedures used. The embalming case report shall be kept on file at the establishment for a period of not less than seven years following the embalming.

F. Except as provided in Subsection A of this section, embalming is not required.

History: 1978 Comp., § 61-32-20, enacted by Laws 1993, ch. 204, § 20; 1999, ch. 284, § 14; 2003, ch. 420, § 8; 2012, ch. 48, § 15; 2019, ch. 164, § 5.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-20 NMSA 1978, as enacted by Laws 1978, ch. 185, § 20, concerning direct disposition practices, and § 20 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, included a licensed embalmer within the provisions of the section; after each occurrence of "funeral service practitioner," added "embalmer".

The 2012 amendment, effective July 1, 2012, changed the name of the act; eliminated references to the associate funeral service practitioner; in Subsection A, after "in accordance with the", deleted "Thanatopractice" and added

"Funeral Services"; in Subsection B, after "except by a funeral service practitioner", deleted "an associate funeral service practitioner"; and in Subsection E, in the first sentence, after "embalmed, the funeral service practitioner", deleted "or associate funeral service practitioner".

The 2003 amendment, effective July 1, 2003, in Subsection A, inserted "or release or receipt by the establishment or crematory" following "hours after death", deleted "or regulation" following "by board rule", inserted "state" following "office of the" twice; and substituted "A dead human body shall not" for "No dead human body shall" preceding "be embalmed" in Subsections B and C.

The 1999 amendment, effective June 18, 1999, inserted "within twenty-four hours after the embalming procedure" and the language beginning "described the elapsed time" in the first sentence of Subsection E, and added Subsection F.

61-32-21. License renewal. (Repealed effective July 1, 2024.)

A. All licenses expire annually and shall be renewed by submitting a completed renewal application, accompanied by the required fees, on a form provided by the board.

B. The board may require proof of continuing education or other proof of competency as a requirement for renewal; provided that a licensee who is age sixty-five or above and who has been licensed by the board for at least twenty consecutive years shall not be required to meet continuing education requirements.

C. A sixty-day grace period shall be allowed each licensee after the end of the licensing period, during which time licenses may be renewed upon payment of the renewal fee and a late fee as prescribed by the board and compliance with any other renewal requirements adopted by the board.

D. Any license not renewed at the end of the grace period shall be expired and invalid. A holder of an expired license shall be required to apply as a new applicant.

History: 1978 Comp., § 61-32-21, enacted by Laws 1993, ch. 204, § 21; 1999, ch. 284, § 15; 2001, ch. 84, § 1.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-21 NMSA 1978, as enacted by Laws 1978, ch. 185, § 21, concerning embalming, and § 21 of the act enacted a new section, effective June 18, 1993.

The 2001 amendment, effective June 15, 2001, added the proviso that certain licensees over the age of sixty-five are not required to meet continuing education

requirements in Subsection B, and extended the grace period from thirty days to sixty days in Subsection C.

The 1999 amendment, effective June 18, 1999, in Subsection C, deleted the first sentence, which read "A license not renewed on or before the expiration date is considered lapsed and is no longer valid" and changed the grace period from ninety days to thirty days, and in Subsection D, substituted "expired and invalid. A holder of an expired license shall" for "considered expired and the license holder shall".

61-32-22. Inactive status. (Repealed effective July 1, 2024.)

A. A funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer who has a current license may request that the license be placed on inactive status. Except as provided in Subsection E of this section, the board shall approve each request for inactive status.

B. A license placed on inactive status may be renewed within a period not to exceed five years following the date the board granted the inactive status.

C. Renewal of an inactive license requires payment of renewal and reinstatement fees as set forth by board rule and compliance with the following requirements:

- (1) certification by the licensee that the licensee has not engaged in the practice of funeral service or direct disposition in this state during the inactive status;
- (2) compliance with continuing education requirements established by board rule; and
- (3) successful completion of an examination, which shall be administered at the discretion of the board, to certify continuing competency.

D. Disciplinary proceedings may be initiated or continued against a licensee who has been granted inactive status.

E. A license shall not be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated.

History: 1978 Comp., § 61-32-22, enacted by Laws 1993, ch. 204, § 22; 1999, ch. 284, § 16; 2003, ch. 420, § 9; 2012, ch. 48, § 16; 2019, ch. 164, § 6.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-22 NMSA 1978, as amended by Laws 1983, ch. 137, § 6, concerning investigations, enforcement, and criminal penalties, and § 22 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, included a licensed funeral arranger and licensed embalmer within the provisions of the section; in Subsection A, after "funeral service practitioner," added "funeral arranger, embalmer".

The 2012 amendment, effective July 1, 2012, permitted funeral service interns to be placed on inactive status and in Subsection A, after "funeral service practitioner," deleted "associate funeral service practitioner" and added "funeral service intern".

The 2003 amendment, effective July 1, 2003, substituted "the" for "his" following "may request that" in Subsection A; deleted "or regulation" following "by board rule" in Subsection C; in Paragraph C(1), substituted "licensee" for "practitioner" near the beginning, inserted "or direct disposition" following "of funeral service"; and substituted "A license shall not" for "No license shall" at the beginning of Subsection E.

The 1999 amendment, effective June 18, 1999, deleted "Funeral service practitioner;" from the beginning

of the section heading; in Subsection A, inserted "associate funeral service practitioner or direct disposer" in the first sentence, added the exception at the beginning, and deleted "unless the practitioner is under investigation or

disciplinary proceedings have been initiated" from the end of the second sentence; inserted "or continued" in Subsection D; and added Subsection E.

61-32-23. Fees and fines. (Repealed effective July 1, 2024.)

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish by rule a schedule of reasonable fees and fines for applications, examinations, licenses, inspections, renewals, penalties, reinstatements and necessary administrative fees. All fees collected shall be deposited in accordance with Section 61-32-26 NMSA 1978. All fines collected shall be deposited in the current school fund.

History: 1978 Comp., § 61-32-23, enacted by Laws 1993, ch. 204, § 23; 1999, ch. 284, § 17; 2017, ch. 52, § 17; 2020, ch. 6, § 59.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-23 NMSA 1978, as amended by Laws 1983, ch. 137, § 7, containing additional prohibitions, and § 23 of the act enacted a new section, effective June 18, 1993.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children,

and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

The 2017 amendment, effective June 16, 2017, provided that all fines collected by the board of funeral services be deposited in the current school fund; in the catchline, added "and fines"; after "establish by", deleted "regulation" and added "rule", after "reasonable fees", added "and fines", and added the last sentence.

The 1999 amendment, effective June 18, 1999, deleted "provided that no one fee shall exceed five hundred dollars (\$500)" at the end of the first sentence, and substituted "in accordance with Section 61-32-26 NMSA 1978" for "in the thanatopractice fund" in the second sentence.

61-32-24. Disciplinary proceedings; judicial review. (Repealed effective July 1, 2024.)

A. The board, in accordance with the procedures set forth in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], may take disciplinary action against any licensee, temporary licensee or applicant.

B. The board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that the applicant or licensee is guilty of any of the following acts of commission or omission:

(1) conviction of an offense punishable by incarceration in a state penitentiary or federal prison; provided that the board receives a copy of the record of conviction, certified to by the clerk of the court entering the conviction, which shall be conclusive evidence of the conviction;

(2) fraud or deceit in procuring or attempting to procure a license;

(3) gross negligence or incompetence;

(4) unprofessional or dishonorable conduct, which includes:

(a) misrepresentation or fraud;

(b) false or misleading advertising;

(c) solicitation of dead human bodies by the licensee or the licensee's agents, assistants or employees, whether the solicitation occurs after death or while death is impending; provided that this shall not be deemed to prohibit general advertising;

(d) solicitation or acceptance by a licensee of a commission, bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in a cemetery, mausoleum or crematory;

(e) using any funeral merchandise previously purchased, in whole or in part, except for transportation purposes, without prior written permission of the person selecting or paying for the use of the merchandise; and

(f) failing to make disposition of a dead human body in the enclosure or container that was purchased for that purpose by the arrangers;

(5) violation of the provisions of the Funeral Services Act or a rule of the board;

(6) violation of any local, state or federal ordinance, law or regulation affecting the practice of funeral service, direct disposition or cremation, including the Prearranged Funeral Plan

Regulatory Law [Chapter 59A, Article 49 NMSA 1978] or any regulations ordered by the superintendent of insurance;

- (7) willful or negligent practice beyond the scope of the license issued by the board;
- (8) refusing to release properly a dead human body to the custody of the person or entity who has the legal right to effect the release, whether or not the authorized cost has been paid. If an establishment receives a dead human body for funeral services but the body is subsequently transferred to another establishment that completes or performs funeral services, the subsequent establishment shall be responsible for all reasonable nonprofessional service charges incurred by the next previous establishment prior to and including transfer of the body and the subsequent establishment shall reimburse the next previous establishment for those charges;
- (9) failure to secure a necessary permit required by law for removal from this state or cremation of a dead human body;
- (10) knowingly making a false statement on a certificate of death;
- (11) failure to give full cooperation to the board or one of its committees, staff, inspectors or agents or an attorney for the board in the performance of official duties;
- (12) having had a license, certificate or registration to practice revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee or applicant similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking the disciplinary action is conclusive evidence of the violation;
- (13) failure to supervise adequately subordinate personnel;
- (14) conduct unbecoming a licensee or detrimental to the safety or welfare of the public;
- (15) employing fraudulent billing practices; or
- (16) practicing funeral service or cremation without a current license.

C. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a person who is licensed as or is an applicant for a license as a funeral service practitioner, embalmer, funeral arranger or funeral service intern is guilty of any of the following acts of commission or omission:

- (1) practicing funeral service without a license or aiding or abetting an unlicensed person to practice funeral service; or
- (2) permitting a funeral service intern to exceed the limitations set forth in the provisions of the Funeral Services Act or the rules of the board.

D. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a direct disposer licensee or a direct disposition establishment licensee is guilty of any of the following acts of commission or omission:

- (1) embalming, restoring, acting as a cosmetician or in any way altering the condition of a dead human body, except for washing and dressing;
- (2) causing a body to be embalmed when embalming is not required by a place of disposition;
- (3) prior to interment, entombment or other final disposition of a dead human body, participating in any rites or ceremonies in connection with such final disposition of the body, or providing facilities for any such rites or ceremonies;
- (4) reclaiming, transporting or causing to be transported a dead human body after written release for disposition; or
- (5) practicing direct disposition without a license or aiding or abetting an unlicensed person to practice direct disposition.

E. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a crematory licensee or applicant or a crematory authority is guilty of any of the following acts of commission or omission:

- (1) engaging or making any representation as engaging in the practice of funeral service or direct disposition, unless the applicant or crematory authority has a license to practice funeral service or direct disposition;

(2) operating a crematory without a license or aiding and abetting a crematory to operate without a license; or

(3) engaging in conduct or activities for which a license to engage in the practice of funeral service or direct disposition is required or aiding and abetting an unlicensed person to engage in conduct or activities for which a license to practice funeral service or direct disposition is required.

F. Unless exonerated by the board, persons who have been subjected to formal disciplinary sanctions by the board shall be responsible for the payment of costs of the disciplinary proceedings, which include costs for:

- (1) court reporters;
- (2) transcripts;
- (3) certification or notarization;
- (4) photocopies;
- (5) witness attendance and mileage fees;
- (6) postage for mailings required by law;
- (7) expert witnesses; and
- (8) depositions.

G. All fees, fines and costs imposed on an applicant, licensee, establishment or crematory shall be paid in full to the board before an initial or renewal license may be issued.

History: 1978 Comp., § 61-32-24, enacted by Laws 1993, ch. 204, § 24; 1995, ch. 158, § 3; 1999, ch. 284, § 18; 2003, ch. 420, § 10; 2012, ch. 48, § 17; 2019, ch. 164, § 7.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-24 NMSA 1978, as enacted by Laws 1978, ch. 185, § 24, construing the Thanatopractice License Law, and § 24 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, included a licensed funeral arranger and licensed embalmer within the provisions of the section; in Subsection C, in the introductory clause, after "funeral service practitioner," added "embalmer, funeral arranger".

The 2012 amendment, effective July 1, 2012, changed the name of the act; imposed liability on a transferee establishment for nonprofessional service charges incurred by a transferor establishment that transfers a body to the transferee establishment for funeral services; in Subsection B, Paragraph (5), after "provisions of the", deleted "Thanatopractice" and added "Funeral Services", in Paragraph (8), in the first sentence, after "to effect the release", deleted "when" and added "whether or not" and added the

second sentence, and in Paragraph (16), after "service", deleted "direct disposition"; in Subsection C, in the introductory sentence, after "funeral service practitioner", deleted "associate funeral service practitioner, assistant funeral service practitioner" and in Paragraph (2), after "permitting", deleted "an associate funeral service practitioner, assistant funeral service practitioner or" and after "provisions of the", deleted "Thanatopractice" and added "Funeral Services"; in Subsection D, in the introductory sentence, after "direct disposer licensee", deleted "or applicant" and after "direct disposition establishment licensee", deleted "or applicant"; and in Subsection E, in Paragraph (1), after "engaging or", deleted "holding oneself out" and added "making any representation".

The 2003 amendment, effective July 1, 2003, deleted "or regulation" near the end of Paragraph B(5) and substituted "rules" for "regulations" near the end of Paragraph C(2).

The 1999 amendment, effective June 18, 1999, rewrote this section to the extent that a detailed comparison is impracticable.

The 1995 amendment, effective April 5, 1995, substituted "conducting, directing or providing facilities for" for "engaging in" in Paragraph (3) of Subsection C and made minor stylistic changes throughout the section.

61-32-25. Additional prohibitions. (Repealed effective July 1, 2024.)

A. No person licensed pursuant to the provisions of the Funeral Services Act shall advertise under any name that tends to mislead the public or that sufficiently resembles the professional or business name of another license holder or that may cause confusion or misunderstanding.

B. No person licensed pursuant to the provisions of the Funeral Services Act shall transport or cause to be transported by common carrier any dead human body out of this state when the licensee knows or has reason to believe that the dead human body carries any notifiable communicable disease or when the transportation would take place more than twenty-four hours after death, unless the body has been prepared or embalmed as provided in the Funeral Services Act, unless approval for transportation has been given by the office of the medical investigator, the secretary of health, a court of competent jurisdiction or other authorized official or unless the body is placed in a sealed container.

C. No person licensed pursuant to the provisions of the Funeral Services Act shall remove, and no authorized person shall embalm, a dead human body when the authorized person has information

indicating crime or violence of any sort in connection with the cause or manner of death, unless in accordance with instructions or regulations of the office of the medical investigator or until permission has been obtained from the office of the medical investigator or other authorized official.

History: 1978 Comp., § 61-32-25, enacted by Laws 1993, ch. 204, § 25; 2012, ch. 48, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-25 NMSA 1978, as amended by Laws 1987, ch. 333, § 13, providing for the delayed repeal of this article, and § 25 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act; in Subsections A, B and C, after "No person licensed", deleted "under" and added "pursuant to the provisions of the" and after "provisions of", deleted "Thanatopractice" and added "Funeral Services"; and in Subsection B, after "embalmed as provided in the", deleted "Thanatopractice" and added "Funeral Services".

61-32-26. Fund established. (Repealed effective July 1, 2024.)

A. There is created in the state treasury the "funeral services fund".

B. All fees and costs received or collected by the board or the department pursuant to provisions of the Funeral Services Act shall be deposited with the state treasurer for credit to the funeral services fund. The state treasurer shall invest the fund as other state funds are invested. All balances in the fund at the end of any fiscal year shall remain in the fund and shall not revert to the general fund.

C. Money in the funeral services fund is appropriated to the board and shall be used only for the purpose of carrying out the provisions of the Funeral Services Act.

History: Laws 1993, ch. 204, § 26; 1999, ch. 284, § 19; 2012, ch. 48, § 19; 2017, ch. 52, § 18.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

The 2017 amendment, effective June 16, 2017, specified that fees and costs collected by the board of funeral services or the department of regulation and licensing pursuant to provisions of the Funeral Services Act be deposited with the state treasurer for credit to the funeral services fund; in Subsection B, after "All", deleted "money" and added "fees and costs".

The 2012 amendment, effective July 1, 2012, changed the name of the act and the thanatopractice fund; in Subsection A, after "state treasury the", deleted "thanatopractice" and added "funeral services"; in Subsection B, after

"provisions of the", deleted "Thanatopractice" and added "Funeral Services" and after "credit to the", deleted "thanatopractice" and added "funeral services"; and in Subsection C, after "Money in the", deleted "thanatopractice" and added "funeral services" and after "provisions of the", deleted "Thanatopractice" and added "Funeral Services".

The 1999 amendment, effective June 18, 1999, in Subsection B, substituted "or collected by the board or the department pursuant to provisions of" for "by the board under" in the first sentence, and inserted "at the end of any fiscal year" in the last sentence; and deleted "meeting the necessary expenses incurred in" following "purpose of" in Subsection C.

61-32-27. Criminal offender employment act. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978] shall govern any consideration of criminal records required or permitted pursuant to the provisions of the Funeral Services Act.

History: Laws 1993, ch. 204, § 27; 2012, ch. 48, § 20.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

The 2012 amendment, effective July 1, 2012, changed the name of the act; after the "required or permitted",

deleted "under" and added "pursuant to the provisions of" and after "provisions of the", deleted "Thanatopractice" and added "Funeral Services".

61-32-28. Communications; confidentiality. (Repealed effective July 1, 2024.)

All written and oral communications made to the board relating to potential disciplinary action shall be subject to the Inspection of Public Records Act [14-2-4 NMSA 1978].

History: Laws 1993, ch. 204, § 28; 1999, ch. 284, § 20.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted "subject to the Inspection of Public Records Act" for "confidential" and deleted the last sentence, which read

"All data communication and information acquired by the board relating to complaints is confidential and shall not be disclosed unless formal disciplinary action is initiated under the Uniform Licensing Act or absent an order of a court of competent jurisdiction."

61-32-29. Construction. (Repealed effective July 1, 2024.)

Nothing in the Funeral Services Act shall be construed to:

A. prohibit a funeral service practitioner or funeral service intern under the supervision of a funeral service practitioner from providing a direct disposition at a funeral or commercial establishment; or

B. govern or limit the authority of any personal representative, trustee or other person having a fiduciary relationship with the deceased.

History: Laws 1993, ch. 204, § 29; 2012, ch. 48, § 21.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

The 2012 amendment, effective July 1, 2012, changed the name of the act and eliminated reference to the

associate funeral service practitioner and the assistant funeral service practitioner; and in Subsection A, after "funeral service practitioner", deleted "an associate funeral service practitioner, assistant funeral service practitioner".

61-32-30. Criminal penalties. (Repealed effective July 1, 2024.)

A person who commits any of the following acts is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment of less than one year, or both:

A. violation of any provision of the Funeral Services Act;

B. rendering or offering to render funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the Funeral Services Act; or

C. advertising or using any designation, diploma or certificate tending to imply that the person is a practitioner of funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the Funeral Services Act.

History: Laws 1993, ch. 204, § 30; 1999, ch. 284, § 21; 2012, ch. 48, § 22.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

The 2012 amendment, effective July 1, 2012, changed the name of the act and in Subsections A, B and C, substituted "Funeral Services" for "Thanatopractice".

The 1999 amendment, effective June 18, 1999, in the introductory language, substituted "who commits any of the following acts" for "who violates any provision of the Thanatopractice Act" and "of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment of less than one year or both" for "not to exceed one thousand dollars (\$1,000) or imprisonment or both", and added Subsections A to C.

61-32-30.1. Unlicensed activity; civil penalty. (Repealed effective July 1, 2024.)

The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a fine in an amount not to exceed two thousand dollars (\$2,000) and costs on a person who is found to have acted without a license in violation of the Funeral Services Act by a court or an administrative proceeding as provided for in the Funeral Services Act.

History: Laws 2003, ch. 420, § 11; 2012, ch. 48, § 23; 2017, ch. 52, § 19.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided that the board of funeral services may impose a fine not to exceed two thousand dollars against any person found to have acted without a license in violation of the Funeral Services Act; after the section heading, added

"The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding", after "impose a fine", added "in an amount not to exceed two thousand dollars (\$2,000)", and after "costs", deleted "as set forth in the Funeral Services Act".

The 2012 amendment, effective July 1, 2012, changed the name of the act; authorized the board to assess costs; after "impose a fine", added "and costs" and substituted "Funeral Services" for "Thanatopractice" throughout the section.

61-32-30.2. Cease and desist orders; fines; finality; hearings. (Repealed effective July 1, 2024.)

A. Notwithstanding the provisions of Sections 61-1-3 and 61-32-24 NMSA 1978, if the board has reasonable cause to believe a person is committing a violation of a provision of the Funeral Services Act, or a rule adopted pursuant to that act, that creates a health risk for the community or a risk to the orderly or prompt disposition of dead human bodies and immediate enforcement is deemed necessary, the board may serve, in the manner prescribed by Section 61-1-5 NMSA 1978, a cease and desist order on a person to require that person to cease the violation. The order shall:

- (1) indicate the violation and the general nature of the evidence of the violation;
- (2) include a notice that if the person fails to comply with the order within twenty-four hours, the person may be subject to fines or costs, as provided in Sections 61-32-6 and 61-32-30.1 NMSA 1978, for noncompliance with the order as a violation of the Funeral Services Act, in addition to fines and costs imposed for a violation indicated in the order; and
- (3) include a notice that a hearing has been scheduled to occur within five working days after service of the cease and desist order and the hearing will proceed unless waived by the person.

B. If the person waives a hearing as provided in Subsection A of this section, the order shall be final and not subject to review or appeal. The board may apply for injunctive relief to enforce the cease and desist order.

C. If a hearing is held, it shall be conducted pursuant to the hearing procedures of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] that are consistent with this section and the consequences of the hearing, including a right to review, shall occur pursuant to that act.

D. An order of the board pursuant to this section or an order of a court to enforce it shall not relieve or absolve a person affected by the order from another liability, penalty or sanction applicable under law.

History: Laws 2012, ch. 48, § 25.

Effective dates. — Laws 2012, ch. 48 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

Delayed repeals. — For delayed repeal of this section, see 61-32-31 NMSA 1978.

61-32-31. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The board of funeral services is terminated on July 1, 2023 pursuant to the provisions of the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of Section 12-9-18 NMSA 1978 until July 1, 2024. Effective July 1, 2024, the Funeral Services Act is repealed.

History: Laws 1993, ch. 204, § 31; 1999, ch. 284, § 22; 2005, ch. 208, § 24; 2011, ch. 4, § 1; 2012, ch. 48, § 24; 2017, ch. 52, § 20.

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2012 amendment, effective July 1, 2012, changed the name of the act and the name of the board; in the first sentence, after "The board of", deleted "thanatopractice" and added "funeral services" and in the second sentence,

after "July 1, 2018, the" deleted "Thanatopractice" and added "Funeral Services".

The 2011 amendment, effective June 17, 2011, extended the life of the thanatopractice board from July 1, 2011 to July 1, 2017 and changed the sunset date from July 1, 2012 to July 1, 2018.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

The 1999 amendment, effective June 18, 1999, substituted "July 1, 2005" for "July 1, 1999" in the first sentence, and "July 1, 2006" for "July 1, 2000" in the last sentence.

ARTICLE 33

Utility Operators

Sec.		Sec.	
61-33-1.	Short title.	61-33-6.	Certification required; prohibition.
61-33-2.	Definitions.	61-33-7.	Suspension and revocation.
61-33-3.	Administration; enforcement.	61-33-8.	Prohibitions; penalty.
61-33-4.	Powers and duties of commission.	61-33-9.	Variance procedures.
61-33-5.	Application requirements; fees; fund created; endorsement.	61-33-10.	Enforcement; compliance orders.

Recompilations. — This article, formerly designated Chapter 61, Article 30 NMSA 1978, was redesignated as

Chapter 61, Article 33 NMSA 1978 by the compiler in 1990 to alphabetize the article headings.

61-33-1. Short title.

Chapter 61, Article 33 NMSA 1978 may be cited as the "Utility Operators Certification Act".

History: 1953 Comp., § 67-40-1, enacted by Laws 1973, ch. 394, § 1; recompiled as 1978 Comp., § 61-33-1; Laws 1992, ch. 44, § 1.

The 1992 amendment, effective March 6, 1992, substituted "Chapter 61, Article 33 NMSA 1978" for "This act".

61-33-2. Definitions.

As used in the Utility Operators Certification Act [61-33-1 NMSA 1978]:

A. "certified operator" means a person who is certified by the department as being qualified to operate one of the classifications of public water supply systems or public wastewater facilities;

B. "commission" means the water quality control commission;

C. "department" means the department of environment;

D. "domestic liquid waste" means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

E. "domestic liquid waste treatment unit" means any system that is designed to discharge less than two thousand gallons per day and that is subject to rules promulgated by the environmental improvement board pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 or a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including septic tanks;

F. "operate" means performing any activity, function, process control decision or system integrity decision regarding water quality or water quantity that has the potential to affect the proper functioning of a public water supply system or public wastewater facility or to affect human health, public welfare or the environment;

G. "person" means any agency, department or instrumentality of the United States and any of its officers, agents or employees, the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any political subdivision or public or private corporation;

H. "public wastewater facility" means a system of structures, equipment and processes designed to collect and treat domestic and industrial waste and dispose of the effluent, but does not include:

(1) any domestic liquid waste treatment unit; or

(2) any industrial facility subject to an industrial pretreatment program regulated by the United States environmental protection agency under the requirements of the federal Clean Water Act of 1977; and

I. "public water supply system" means:

(1) a system for the provision through pipes or other constructed conveyances to the public of water for human consumption or domestic purposes if the system:

- (a) has at least fifteen service connections; or
- (b) regularly serves an average of at least twenty-five individuals at least sixty days of the year; and
- (2) includes any water supply source and any treatment, storage and distribution facilities under control of the operator of the system.

History: 1978 Comp., § 61-33-2, enacted by Laws 1992, ch. 44, § 2; 2001, ch. 181, § 1; 2005, ch. 285, § 1.

Federal Clean Water Act of 1977. — The federal Clean Water Act of 1977, referred to in Subsection H(2), appears as 33 U.S.C.S. § 1251 et seq.

Repeals and reenactments. — Laws 1992, ch. 44, § 2 repeals former 61-33-2 NMSA 1978, as amended by Laws 1977, ch. 253, § 67, and enacts the above section, effective March 6, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

The 2005 amendment, effective July 1, 2005, changes "commission" to "department", "water supply systems" to "public water supply systems" and "wastewater facilities" to "public wastewater facilities" in Subsection A; deletes the former definition of "certified supervisor" as a person certified by the commission to operate water supply systems or wastewater facilities and who performs on-site coordinations, direction and inspection of the operations

of public wastewater or public water supply facilities; deletes former provision of Subsection B which included the department in the definition of the "commission" when the department acted under the Utility Operators Certification Act; defines "domestic liquid waste treatment unit" in Subsection E to include any system that is designed to discharge less than two thousand gallons per day and that is subject to rules promulgated by the environmental improvement board pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978; deletes aerobic treatment units as being included in a "domestic liquid waste treatment unit" in Subsection E; and adds Subsection F to define "operate".

The 2001 amendment, effective June 15, 2001, in Paragraph I(1) inserted "through pipes or other constructed conveyances" and deleted "piped" preceding "water".

61-33-3. Administration; enforcement.

A. The administration and enforcement of the Utility Operators Certification Act is vested in the department.

B. The department shall:

- (1) approve and accredit schools and training programs designed to educate and qualify persons for certification in one of the classifications of public water supply system operators or public wastewater facility operators;
- (2) prepare and administer written and practical examinations, based on nationally accepted standards, for certification of applicants as operators for one of the facility classifications established pursuant to Subsection A of Section 61-33-4 NMSA 1978;
- (3) enter into agreements, contracts or cooperative arrangements with persons;
- (4) receive and accept financial and technical assistance;
- (5) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978]; and
- (6) issue, renew, suspend or revoke licenses or discipline a licensee in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

History: 1953 Comp., § 67-40-3, enacted by Laws 1973, ch. 394, § 3; recompiled § 61-33-3; Laws 1992, ch. 44, § 3; 2005, ch. 285, § 2; 2022, ch. 39, § 101.

Cross references. — For water quality control commission, see 74-6-3 NMSA 1978.

The 2022 amendment, effective May 18, 2022, required the department of environment to promulgate rules in accordance with the State Rules Act and to issue, renew, suspend or revoke licenses or discipline a license in accordance with the Uniform Licensing Act; and in Subsection B, added Paragraphs B(5) and B(6).

The 2005 amendment, effective July 1, 2005, changes "commission" to "department" in Subsection A, deletes the former provision of Subsection A which provided that the commission may delegate the administration and enforcement of the Utility Operator Certification Act to the department except adoption of regulations and conduct of

hearings; adds Subsections B(1) through (4) to provide the duties of the department with respect to approval and accreditation of schools and training programs, examinations, agreements and contracts and financial and technical assistance.

The 1992 amendment, effective March 6, 1992, designated the formerly undesignated provisions as Subsection A, deleted "water quality control" preceding "commission" in Subsection A, and added Subsection B.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 569; 61A Am. Jur. 2d Pollution Control § 129; 78 Am. Jur. 2d Waterworks and Water Companies §§ 1, 38.

39A C.J.S. Health and Environment §§ 45, 46, 131.

61-33-4. Powers and duties of commission.

The commission may adopt rules relating to the administration and enforcement of the Utility Operators Certification Act [61-33-1 NMSA 1978]. The commission shall:

A. adopt rules that classify public water supply systems and public wastewater facilities based on:

- (1) size and type of system or facility;
- (2) capacity of the system or facility based on the size of the serviced area and the number and size of the users to be served;
- (3) type and character of the water or wastewater to be treated; and
- (4) physical conditions affecting the treatment plants, collection systems and distribution systems;

B. adopt rules providing standards and criteria for the certification of operators based on their qualifications and their ability to operate public water supply systems or public wastewater facilities of the various classifications;

C. appoint a seven-member board from certified operators to function with the commission to establish qualifications of operators, classify public water supply systems and public wastewater facilities, adopt rules and advise the department on the administration of the Utility Operators Certification Act. Two board members selected by the board shall sit as commission members on matters to which that act is applicable;

D. adopt and file under the State Rules Act [14-4-1 NMSA 1978] rules necessary to carry out the provisions of the Utility Operators Certification Act; and

E. adopt rules providing criteria for identifying the minimum number of certified operators needed to operate the various classifications of public water supply systems or public wastewater facilities in order to protect human health, public welfare or the environment.

History: 1953 Comp., § 67-40-4, enacted by Laws 1973, ch. 394, § 4; 1979, ch. 147, § 1; recompiled § 61-33-4; Laws 1992, ch. 44, § 4; 2005, ch. 285, § 3.

Cross references. — For the Uniform Licensing Act, see 61-1-1 NMSA 1978.

The 2005 amendment, effective July 1, 2005, provides that the commission may adopt rules relating the administration and enforcement of the Utility Operators Certification Act; deletes the former provision in subsection A that the rules classify systems and facilities into categories for each type of utility; changes "plant operators" to "operators" in Subsection B; deletes the former provision in Subsection B that standards and criteria relate to qualifications and abilities to supervise systems and facilities; deletes the former provisions of Subsection C which related to the approval and accreditation of schools and training program and which provided that the board be appointed from certified public waste supply system operators and public wastewater facility operators provides in Subsection C that the board shall classify public water systems and public wastewater facilities and advise the department; deletes former Subsection D which related to

the examinations; deletes former Subsection E which related to agreements and contracts; deletes former Subsection F which related to financial and technical assistance; deletes the former provision; adds Subsection E to provide that the commission shall adopt rules providing criteria for identifying the minimum number of certified operators to operate various classifications of public water supply systems and public wastewater facilities to protect human health, public welfare or the environment.

The 1992 amendment, effective March 6, 1992, substituted "that" for "which" and deleted "four" preceding "categories" in the introductory paragraph of Subsection A, inserted ", collection systems" in Subsection A(4), substituted "Certification" for "Certifications" in the first sentence of Subsection G, substituted "public water supply systems" for "water systems" several times throughout the section, and inserted "public" preceding "wastewater facilities" several times throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 9.

61-33-5. Application requirements; fees; fund created; endorsement.

A. An applicant for certification as a certified operator shall:

- (1) make application on forms furnished by the department;
- (2) submit evidence satisfactory to the department that the applicant has reached the age of majority; and
- (3) except as provided in Section 61-1-34 NMSA 1978, pay in advance to the department fees set by rule not to exceed:

- (a) for examination for certification in each classification \$100;
- (b) for renewal of a certificate after a period set by rule \$40.00; and
- (c) for issuance of a certificate by endorsement \$100.

B. Fees collected pursuant to Subsection A of this section shall be deposited with the state treasurer in the "public water supply system operator and public wastewater facility operator fund", hereby created. The fund shall be used solely for the purpose of administering and enforcing the Utility Operators Certification Act [Chapter 61, Article 33 NMSA 1978]. The fund shall be administered by the department. Money in the fund shall be retained by the department for use, subject to appropriation by the legislature. Balances in the fund at the end of any fiscal year shall not revert to the general fund, but shall accrue to the credit of the fund. Earnings on the fund shall be credited to the fund.

C. The department may, in its discretion, endorse for certification without examination an operator who submits evidence satisfactory to the department that the applicant has reached the age of majority and holds a valid license or certification in any state, territory or foreign jurisdiction having standards equal to or exceeding those of New Mexico.

D. Fees shall not be increased more than once per calendar year. The first increase of the fees shall not result in any fee greater than thirty dollars (\$30.00). Any subsequent increase of the fees shall not be more than five percent of the existing fee.

History: 1953 Comp., § 67-40-5, enacted by Laws 1973, ch. 394, § 5; recompiled as 1978 Comp., § 61-33-5; Laws 1992, ch. 44, § 5; 2005, ch. 285, § 4; 2021, ch. 92, § 17.

Cross references. — For age of majority, see 12-2A-3 and 28-6-1 NMSA 1978.

For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided for the waiver of certified operator certification fees for military service members and veterans; and in Subsection A, Paragraph A(3), added "except as provided in Section 61-1-34 NMSA 1978".

The 2005 amendment, effective July 1, 2005, changes "public waste supply system operator or public wastewater facility operator" to "certified operator" in Subsection A; changes "commission" to "department" in Subsections A(1) through (3); deletes the former provision in Subsection A(3) (a) the certification is for a public water supply system operator or a public wastewater facility operator; increases the fee in Subsection A(3)(a) from \$25 to \$100; deletes the \$10 fee for issuance of a certificate in Subsection A(3); deletes the reference to the annual renewal of a certificate in Subsection A(3)(b); provides that the renewal of a certificate shall be after a period set by rule in Subsection A(3)(b); increases the fee for renewal of a certificate in Subsection A(3)(b) from \$10 to \$40; increases the fee for issuance of a certificate by endorsement from \$25 to \$100; deletes the former provision

in Subsection B that the fund shall be used to make necessary refunds and that at the end of each month fees in the fund after refund shall be transferred to the general fund; provides in Subsection B that the fund shall be used to administer and enforce the Utility Operators Certification Act, shall be administered by the department, money in the fund shall be retained by the department for use subject to appropriation by the legislature, balances in the fund at the end of a fiscal year shall not revert and earnings shall be credited to the fund; changes "commission" to "department" in Subsection C; deletes the former provision in Subsection C that certification related to a public water supply system operator or public wastewater facility operator who met the qualifications in Subsection A(2) of this section; provides in Subsection C that the operator must submit evidence satisfactory to the department that the applicant has reached the age of majority; and adds Subsection D to provide that fees shall not be increased more than once each year, the first increase shall not result in a fee greater than \$30 and subsequent increases shall not be more than five percent of existing fees.

The 1992 amendment, effective March 6, 1992, redesignated former Subsection A(4) as present Subsection B while making minor stylistic changes therein, redesignated former Subsection B as present Subsection C, substituted "public water supply system" for "water system" several times throughout the section, and inserted "public" preceding "wastewater facility" several times throughout the section.

61-33-6. Certification required; prohibition.

It is unlawful to operate or allow the operation of a public water supply system or public wastewater facility unless the system or facility is operated by or under the supervision of a certified operator who meets or exceeds the appropriate certification level.

History: 1953 Comp., § 67-40-6, enacted by Laws 1973, ch. 394, § 6; recompiled as 1978 Comp., § 61-33-6; Laws 1992, ch. 44, § 6; 2005, ch. 285, § 5.

The 2005 amendment, effective July 1, 2005, deletes former references to public water supply system and public wastewater facility; provides that it is unlawful to allow the operation of a system or facility unless it is operated or supervised by a certified operator who meets or exceeds the appropriate certification level.

The 1992 amendment, effective March 6, 1992, deleted "present plant operators" at the end of the section catchline, deleted the former Subsection A designation at the beginning of the section, substituted "it is" for "it shall

be", substituted "public water supply system" for "water system" several times throughout the section, inserted "public" preceding "wastewater facility" several times throughout the section, deleted "for public or commercial use serving twenty-five hundred persons or more after July 1, 1976" preceding "unless", and deleted former Subsection B relating to present plant operators.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 1, 4.
53 C.J.S. Licenses § 30.

61-33-7. Suspension and revocation.

The department, in accordance with the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978] relating to notice and hearing, may suspend or revoke a certification upon the grounds that the certified operator:

- A. committed fraud or deceit in procuring the certification;
- B. committed gross incompetence in the operation of a public water supply system or public wastewater facility;
- C. was derelict in the performance of a duty as a certified operator;
- D. performed in the capacity of a higher classification of certified operator than that in which the operator is certified, except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level for that classification of public water supply system or public wastewater facility; or
- E. is convicted of any violation of Section 61-33-8 NMSA 1978 or any state or federal water quality statutes.

History: 1953 Comp., § 67-40-7, enacted by Laws 1973, ch. 394, § 7; recompiled as 1978 Comp., § 61-33-7; Laws 1992, ch. 44, § 7; 2005, ch. 285, § 6.

The 2005 amendment, effective July 1, 2005, changes "commission" to "department"; provides that the department may suspend or revoke a certification; changes "is guilty of" to "committed" in Subsections A and B; deletes the former provision in Subsection B that the operator was grossly incompetent in the supervision of the class of system or facility that he is certified to supervise or operate; deletes the former references to public water system operator or public wastewater facility operator in Subsection C, deletes the former references to public water system operator or public wastewater facility operator in Subsection D; and provides in Subsection D that the operator performed in a capacity of a higher classification

of certified operator than the operator is certified, except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level.

The 1992 amendment, effective March 6, 1992, added Subsection E, substituted "public water supply system" for "water system" several times throughout the section, and inserted "public" preceding "wastewater facility" several times throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses § 50 et seq.

61-33-8. Prohibitions; penalty.

- A. It is unlawful for any person not certified as an operator to:
 - (1) use the title "certified operator" or words of similar import in connection with the person's employment;
 - (2) represent himself as a certified operator; or
 - (3) perform the duties of a certified operator, except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level for that classification of public water supply system or public wastewater facility.
- B. Any violation of the provisions of this section is a misdemeanor.

History: 1953 Comp., § 67-40-8, enacted by Laws 1973, ch. 394, § 8; recompiled as 1978 Comp., § 61-33-8; Laws 1992, ch. 44, § 8; 2005, ch. 285, § 7.

The 2005 amendment, effective July 1, 2005, deletes references in Subsection A to public water supply system and public wastewater facility and to the supervisor of such systems and facilities; provides in Subsection A that it is unlawful to perform prohibited action except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level for that classification of system or facility; and deletes the former provision of Subsection B which provided that it is unlawful for a persons who operates a public water supply system or public wastewater facility to employ a supervisor or operator who is not certified.

The 1992 amendment, effective March 6, 1992, substituted "person who operates a public water supply system or public wastewater facility" for "person, instrumentality of the state or instrumentality of any political subdivision of the state expending any public funds" in Subsection B, substituted "public water supply system" for "water system" several times throughout the section, and inserted "public" preceding "wastewater facility" several times throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control § 594.

Validity of state statutory provision permitting administrative agency to impose monetary penalties for violation of environmental pollution statute, 81 A.L.R.3d 1258.

61-33-9. Variance procedures.

A. The commission shall establish by regulation a variance procedure for public water supply system and public wastewater facility operating authorities.

B. Any variance procedure established by the commission shall not allow an operating authority more than six months to obtain the service of a certified operator, except the commission may give a variance not to exceed eighteen months if the operator in charge is involved in a training course that will bring his level of competency to the level required within the eighteen-month period.

History: 1953 Comp., § 67-40-9, enacted by Laws 1973, ch. 394, § 9; recompiled as 1978 Comp., § 61-33-9; Laws 1992, ch. 44, § 9.

The 1992 amendment, effective March 6, 1992, twice inserted "public" in Subsection A.

61-33-10. Enforcement; compliance orders.

A. Whenever, on the basis of any information, the department determines that a person has violated, is violating or threatens to violate any requirement of the Utility Operators Certification Act [61-33-1 NMSA 1978], any rule adopted pursuant to that act or any condition of a certification issued under that act, the department may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation and either requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation, or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

B. Any penalty assessed in the compliance order shall not exceed two thousand five hundred dollars (\$2,500) per day for each violation of any provision of the Utility Operators Certification Act, any rule adopted pursuant to the provisions of that act or any condition of a certification issued under that act.

C. In assessing any penalty authorized by this section, the department shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

D. If a violator fails to take corrective actions within the time specified in a compliance order, the department may assess a civil penalty of not more than five thousand dollars (\$5,000) for each day of continued noncompliance with the compliance order.

E. Any compliance order issued by the department pursuant to this section shall become final unless, no later than thirty days after the compliance order is served, any person named in the compliance order submits a written request to the department for a public hearing. Upon receiving a request, the department shall promptly conduct a public hearing. A complete record of the proceedings shall be made and preserved.

F. The department may appoint a hearing officer to preside over the public hearing held pursuant to this section. If a hearing officer is appointed, the hearing officer shall forward a recommendation based upon the record to the secretary of environment, who shall make the final decision.

G. In connection with any proceeding pursuant to the provisions of this section, the department may:

(1) adopt rules for discovery procedures; and

(2) issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents.

H. A person aggrieved by an adverse final decision of the secretary may appeal the decision to the commission. The appeal shall be on the record. The commission may, upon motion by a party, receive either oral or written arguments by the parties limited to the evidence contained in the record.

I. All penalties collected pursuant to this section shall be deposited in the general fund to the credit of the current school fund.

History: Laws 1992, ch. 44, § 10; 2005, ch. 285, § 8.
The 2005 amendment, effective July 1, 2005, changed "commission" to "department"; provided in Subsection E

that a complete record of the proceedings shall be made and preserved; provided in Subsection F that if a hearing officer is appointed, the hearing officer shall forward

a recommendation to the secretary of environment; added Subsection H to provide that an aggrieved party may appeal the decision of the secretary to the commission and

that the commission may receive oral or written argument; and provided in Subsection I that all penalties shall be credited to the current school fund.

ARTICLE 34

Signed Language Interpreting Practices

Sec.

- 61-34-1. Short title.
- 61-34-2. Definitions.
- 61-34-3. Scope of practice.
- 61-34-4. License required.
- 61-34-5. Exemptions.
- 61-34-6. Confidential communication.
- 61-34-7. Board created.
- 61-34-8. Board powers and duties.
- 61-34-9. Requirements for licensure.

Sec.

- 61-34-10. License renewal.
- 61-34-11. Fees.
- 61-34-12. Uniform licensing act.
- 61-34-13. Fund created.
- 61-34-14. License denial, suspension or revocation.
- 61-34-15. Penalties.
- 61-34-16. Criminal Offender Employment Act.
- 61-34-17. Repealed.

61-34-1. Short title.

Chapter 61, Article 34 NMSA 1978 may be cited as the "Signed Language Interpreting Practices Act".

History: Laws 2007, ch. 248, § 1; 2013, ch. 166, § 6.

The 2013 amendment, effective June 14, 2013, added the NMSA chapter and article for the Signed Language

Interpreting Practices Act; and at the beginning of the sentence, deleted "Sections 1 through 17 of this act" and added "Chapter 61, Article 34 NMSA 1978".

61-34-2. Definitions.

As used in the Signed Language Interpreting Practices Act:

- A. "board" means the signed language interpreting practices board;
- B. "consumer" means a person using the services of a signed language interpreter;
- C. "deaf, hard-of-hearing or deaf-blind person" means a person who has either no hearing or who has significant hearing loss;
- D. "department" means the regulation and licensing department;
- E. "interpreter" means a person who practices interpreting;
- F. "interpreter education program" or "interpreter preparation program" means:
 - (1) a post-secondary degree program of at least two year's duration accredited by the state or similar accreditation by another state, district or territory; or
 - (2) a substantially equivalent education program approved by the board; and
- G. "interpreting" means the process of providing accessible communication between deaf, hard-of-hearing or deaf-blind persons and hearing persons, including:
 - (1) communication between signed language and spoken language; or
 - (2) other modalities such as visual, gestural and tactile methods, not to include written communication.

History: Laws 2007, ch. 248, § 2.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-3. Scope of practice.

For the purposes of the Signed Language Practices Act, a person is interpreting if the person advertises, offers to practice, is employed in a position described as interpreting or holds out to the public or represents in any manner that the person is an interpreter in this state.

History: Laws 2007, ch. 248, § 3.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-4. License required.

Unless licensed pursuant to the Signed Language Interpreting Practices Act, a person shall not:

- A. practice as an interpreter or perform interpreting services:
 - (1) for compensation or where compensation could be reasonably expected; or
 - (2) where effective communication is mandated by state or federal law;
- B. use the title of interpreter or make any representation as being an interpreter, or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice interpreting; or
- C. advertise or make any representation to the public or in any manner that the person is licensed to provide interpreting services.

History: Laws 2007, ch. 248, § 4.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-5. Exemptions.

The Signed Language Interpreting Practices Act does not apply to:

- A. nonresident interpreters working in New Mexico less than thirty calendar days per year;
- B. interpreting in religious or spiritual settings;
- C. interpreting in informal settings for friends, families or guests;
- D. interpreting in emergency situations where the deaf, hard-of-hearing or deaf-blind person or that person's legal representative decides that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer;
- E. the activities or services of a supervised interpreter intern or student in training who is enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning approved by the board; or
- F. multilingual interpreting in order to accommodate the personal choice of the consumer.

History: Laws 2007, ch. 248, § 5.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-6. Confidential communication.

A. A communication is confidential when it is not intended to be disclosed to third persons other than those present to further the interest of the person requiring the interpreting.

B. A licensed signed language interpreter shall not disclose confidential information obtained in the course of professional services.

History: Laws 2007, ch. 248, § 6.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-7. Board created.

- A. The "signed language interpreting practices board" is created.
- B. The board is administratively attached to the department with administrative staff provided by the department.
- C. The governor shall appoint the members to serve on the board.
- D. The board shall consist of seven members, at least two of whom are from each congressional district, as follows:
 - (1) two licensed community interpreters and two licensed educational interpreters, at least one of whom is a deaf or hard-of-hearing person;

(2) two deaf, hard-of-hearing, deaf-blind persons who are regular consumers of signed language interpreting services; and

(3) one person representing the general public who has never been a licensed signed language interpreter and has no financial interest in the profession of signed language interpreting.

E. Members shall serve for staggered terms of three years each, except that the initial board shall be appointed so that the terms of three members expire June 30, 2009 and the terms of four members expire June 30, 2010.

F. Vacancies shall be filled by appointment by the governor for the unexpired term within ninety days of the vacancy. Board members shall serve until their successors have been appointed and qualified.

G. Members shall be paid per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

H. No member shall serve more than two consecutive terms. A member failing to attend three meetings, after proper notice, shall be recommended for removal as a board member unless excused for reasons set forth in board rules.

I. The board shall elect a chair and other officers as it deems necessary to administer its duties.

J. The board shall hold at least two meetings annually and additional meetings as the board deems necessary. The additional meetings may be held upon call of the chair or upon written request of four members. Four members of the board, including the public member, constitutes a quorum to conduct business.

History: Laws 2007, ch. 248, § 7.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-8. Board powers and duties.

A. The board shall:

- (1) administer and enforce provisions of the Signed Language Interpreting Practices Act;
- (2) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] setting forth the qualifications of applicants for licensure and the provisions for the administration of examinations and the issuance, renewal, suspension or revocation of licenses;
- (3) evaluate the qualifications of applicants for licensure and issue licenses;
- (4) promulgate rules to effectively carry out and enforce the provisions of the Signed Language Interpreting Practices Act;
- (5) submit an annual budget for each fiscal year to the department;
- (6) maintain a record of all proceedings; and
- (7) provide an annual report to the governor.

B. The board may refuse, suspend or revoke a license of an interpreter, conduct investigations, issue subpoenas and hold hearings as provided in the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

History: Laws 2007, ch. 248, § 8; 2022, ch. 39, § 102.

The 2022 amendment, effective May 18, 2022, clarified that the signed language interpreting practices board is required to follow the provisions of the State Rules Act

when promulgating rules; and in Subsection A, Paragraph A(2), after "promulgate rules", added "in accordance with the State Rules Act", and in Paragraph A(4), after "promulgate rules", deleted "pursuant to the State Rules Act".

61-34-9. Requirements for licensure.

A. The board shall issue a license as a community signed language interpreter to a person who:

- (1) files a completed application that is accompanied by the required fees; and
- (2) submits satisfactory evidence that the person:
 - (a) has reached the age of majority;
 - (b) is of good moral character;
 - (c) has completed all educational requirements established by the board; and

(d) holds certification under a nationally recognized signed language interpreters organization or by an equivalent organization as defined by rule of the board.

B. The board shall issue a license as an educational signed language interpreter to a person who:

- (1) files a completed application that is accompanied by the required fees; and
- (2) submits satisfactory evidence that the person:
 - (a) has reached the age of majority;
 - (b) is of good moral character;
 - (c) has completed all educational requirements established by the board; and
 - (d) provides evidence of passing a skill assessment exam as established by rule.

C. The board shall issue a one-time, five-year provisional license to a person not meeting the community signed language interpreter or educational signed language interpreter requirements for licensure as a signed language interpreter pursuant to the Signed Language Interpreting Practices Act [61-34-1 NMSA 1978] if the person:

- (1) has completed an interpreter education program or interpreter preparation program; or
- (2) is employed as a community signed language interpreter or an educational signed language interpreter at the time that act becomes effective.

History: Laws 2007, ch. 248, § 9.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-10. License renewal.

A. Notwithstanding Subsection B of Section 8 [61-34-8 NMSA 1978] of the Signed Language Interpreting Practices Act, a licensee may renew a license every two years by submitting a completed renewal application provided by the board.

B. The board may require continuing education for license renewal as established by rule.

C. If a license is not renewed by the expiration date, the license shall be considered expired, and the licensee shall refrain from practicing. The licensee may renew within a sixty-day grace period, which begins the first day the license expires, by submitting payment of the renewal fee and a late fee and complying with all renewal requirements. Upon renewal of the license, the licensee may resume practice.

D. The board may issue rules providing for the inactive status of licenses.

History: Laws 2007, ch. 248, § 10.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-11. Fees.

Except as provided in Section 61-1-34 NMSA 1978, the board may, by rule, establish a schedule of fees as follows:

- A. an initial nonrefundable biennial licensure fee not to exceed two hundred fifty dollars (\$250);
- B. a nonrefundable biennial license renewal fee not to exceed two hundred dollars (\$200);
- C. an initial nonrefundable annual provisional licensure fee not to exceed two hundred dollars (\$200); and
- D. an annual nonrefundable provisional licensure renewal fee not to exceed one hundred dollars (\$100) limited to five years that the licensee may renew.

History: Laws 2007, ch. 248, § 11; 2020, ch. 6, § 60.

children, and for certain veterans; and in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent

61-34-12. Uniform licensing act.

The Signed Language Interpreting Practices Act is enforceable according to the procedures set forth in the Uniform Licensing Act [61-1-1 NMSA 1978].

History: Laws 2007, ch. 248, § 12.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-13. Fund created.

A. The "signed language interpreting practices fund" is created in the state treasury.

B. All money received by the board under the Signed Language Interpreting Practices Act shall be deposited with the state treasurer for credit to the signed language interpreting practices fund. The fund consists of fees as provided in the Signed Language Interpreting Practices Act and money received from the telecommunications access fund. The state treasurer shall invest the fund as other state funds are invested. Earnings from investment of the fund shall be credited to the fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert.

C. Money in the fund is subject to appropriation by the legislature to be used only for purposes of carrying out the provisions of the Signed Language Interpreting Practices Act.

D. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the superintendent of regulation and licensing.

History: Laws 2007, ch. 248, § 13.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-14. License denial, suspension or revocation.

A. In accordance with procedures contained in the Uniform Licensing Act [61-1-1 NMSA 1978], the board may deny, revoke or suspend a license held or applied for under the Signed Language Interpreting Practices Act, upon grounds that the licensee or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license;
- (2) is guilty of gross incompetence;
- (3) is guilty of unprofessional or unethical conduct as defined by rule of the board;
- (4) uses untruthful or misleading advertising;
- (5) is habitually or excessively using controlled substances or alcohol to such a degree the

licensee or applicant is rendered unfit to practice as a signed language interpreter pursuant to the Signed Language Interpreting Practices Act;

- (6) has violated the Signed Language Interpreting Practices Act;

(7) is guilty of aiding and abetting a person not licensed to practice signed language interpreting pursuant to the Signed Language Interpreting Practices Act; or

(8) as evidenced by a certified copy of the record of jurisdiction, has had a license, certificate or registration to practice signed language interpreting revoked, suspended or denied in any state or territory of the United States for actions pursuant to this section.

B. Disciplinary proceedings may be initiated by a complaint of a person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act.

C. A person filing a complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

History: Laws 2007, ch. 248, § 14.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-15. Penalties.

A person who violates a provision of the Signed Language Interpreting Practices Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

History: Laws 2007, ch. 248, § 15.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-16. Criminal Offender Employment Act.

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Signed Language Interpreting Practices Act.

History: Laws 2007, ch. 248, § 16.

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-17. Repealed.

Repealed. — Laws 2013, ch. 166, § 10 repealed 61-34-17 NMSA 1978, as enacted by Laws 2007, ch. 248, § 17, relating to the delayed repeal of the Signed Language

Interpreting Practices Act, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 *NMOneSource.com*.

ARTICLE 35

Unlicensed Health Care Practice

Sec. 61-35-1. Short title.

61-35-2. Definitions.

61-35-3. Licensing exemption.

61-35-4. Prohibited acts.

61-35-5. Complementary and alternative health care practitioner; duties.

Sec.

61-35-6. Applicability.

61-35-7. Disciplinary actions.

61-35-8. Duties of the superintendent.

61-35-1. Short title.

This act may be cited as the "Unlicensed Health Care Practice Act".

History: Laws 2009, ch. 141, § 1.

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

61-35-2. Definitions.

A. "complementary and alternative health care practitioner" means an individual who provides complementary and alternative health care services;

B. "complementary and alternative health care service" means the broad domain of complementary and alternative healing methods and treatments including the following practices and excluding the practice of naturopathic medicine by an individual licensed as a naturopathic doctor pursuant to the Naturopathic Doctors' Practice Act [61-12G-1 through 61-12G-13 NMSA 1978]:

- (1) anthroposophy;
- (2) aromatherapy;
- (3) ayurveda;
- (4) culturally traditional healing practices, including practices by a curandera, sobadora, partera, medica and arbolaira, and healing traditions, including plant medicines and foods, prayer, ceremony and song;
- (5) detoxification practices and therapies;
- (6) energetic healing;
- (7) folk practices;
- (8) Gerson therapy and colostrum therapy;
- (9) healing practices utilizing food, dietary supplements, nutrients and the physical forces of heat, cold, water, touch and light;
- (10) healing touch;
- (11) herbology or herbalism;
- (12) homeopathy;
- (13) meditation;
- (14) mind-body healing practices;
- (15) naturopathy; provided that "naturopathy" does not include the practice of naturopathic medicine by an individual licensed as a naturopathic doctor pursuant to the Naturopathic Doctors' Practice Act;
- (16) nondiagnostic iridology;
- (17) noninvasive instrumentalities;
- (18) polarity therapy; and
- (19) holistic kinesiology and other muscle testing techniques;

C. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] or rules adopted pursuant to that act;

D. "conventional medical diagnosis" means a medical term that is commonly used and understood in conventional western medicine;

E. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription; that is restricted to use by licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

- (1) "Caution: federal law prohibits dispensing without prescription.";
- (2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or
- (3) "Rx only";

F. "department" means the regulation and licensing department;

G. "health care practitioner" means an individual who provides health care services;

H. "health care service" means any service relating to the physical and mental health and wellness of an individual; and

I. "sexual contact" means touching the primary genital area, groin, anus, buttocks or breast of a patient or allowing a patient to touch another's primary genital area, groin, anus, buttocks or breast and includes sexual intercourse, cunnilingus, fellatio or anal intercourse, whether or not there is any emission, or introducing any object into the genital or anal openings of another.

History: Laws 2009, ch. 141, § 2; 2019, ch. 244, § 18.

The 2019 amendment, effective June 14, 2019, excluded the practice of naturopathic medicine from the definition of complementary and alternative healing methods and treatments as used in the Unlicensed Health Care Practice Act, and provided that "naturopathy" does not include the practice of naturopathic medicine; in Subsection B, in the introductory clause, after "including", added "the following practices and excluding the practice of naturopathic medicine by an individual licensed as a

naturopathic doctor pursuant to the Naturopathic Doctors' Practice Act", and in Paragraph B(15), after "naturopathy", added "provided that 'naturopathy' does not include the practice of naturopathic medicine by an individual licensed as a naturopathic doctor pursuant to the Naturopathic Doctors' Practice Act";.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

61-35-3. Licensing exemption.

A complementary and alternative health care practitioner who is not licensed, certified or registered in New Mexico as a health care practitioner shall not be in violation of any licensing law relating to health care services pursuant to Chapter 61 NMSA 1978 unless that individual:

- A. engages in any activity prohibited in Section 4 [61-35-4 NMSA 1978] of the Unlicensed Health Care Practice Act; or
- B. fails to fulfill the duties set forth in Section 5 [61-35-5 NMSA 1978] of the Unlicensed Health Care Practice Act.

History: Laws 2009, ch. 141, § 3.

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

61-35-4. Prohibited acts.

A complementary and alternative health care practitioner shall not:

- A. perform surgery on an individual;
- B. set fractures on an individual;
- C. administer x-ray radiation to an individual;
- D. prescribe or dispense dangerous drugs or controlled substances to an individual;
- E. directly manipulate the joints or spine of an individual;
- F. physically invade the body except for the use of non-prescription topical creams, oils, salves, ointments, tinctures or any other preparations that may penetrate the skin without causing harm;
- G. make a recommendation to discontinue current medical treatment prescribed by a licensed health care practitioner;
- H. make a specific conventional medical diagnosis;
- I. have sexual contact with a current patient or former patient within one year of rendering service;
- J. falsely advertise or provide false information in documents described in Subsection A of Section 5 [61-35-5 NMSA 1978] of the Unlicensed Health Care Practice Act;
- K. illegally use dangerous drugs or controlled substances;
- L. reveal confidential information of a patient without the patient's written consent;
- M. engage in fee splitting or kickbacks for referrals;
- N. refer to the practitioner's self as a licensed doctor or physician or other occupational title pursuant to Chapter 61 NMSA 1978; or
- O. perform massage therapy on an individual pursuant to the Massage Therapy Practice Act [61-12C-1 NMSA 1978].

History: Laws 2009, ch. 141, § 4.

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

61-35-5. Complementary and alternative health care practitioner; duties.

Except for persons providing health care services pursuant to Section 61-6-17 NMSA 1978 or to employees or persons acting pursuant to the direction of licensed health care facilities or licensed health care providers while working within the scope of their employment or direction, a complementary and alternative health care practitioner shall:

- A. provide to a patient prior to rendering services a patient information document, either in writing in plain language that the patient understands or, if the patient cannot read, orally in a language the patient understands, containing the following:

- (1) the complementary and alternative health care practitioner's name, title and business address and telephone number;
- (2) a statement that the complementary and alternative health care practitioner is not a health care practitioner licensed by the state of New Mexico;
- (3) a statement that the treatment to be provided by the complementary and alternative health care practitioner is complementary or alternative to health care services provided by health care practitioners licensed by the state of New Mexico;
- (4) the nature and expected results of the complementary and alternative health care services to be provided;
- (5) the complementary and alternative health care practitioner's degrees, education, training, experience or other qualifications regarding the complementary and alternative health care services to be provided;
- (6) the complementary and alternative health care practitioner's fees per unit of service and method of billing for such fees and a statement that the patient has a right to reasonable notice of changes in complementary and alternative health care services or charges for complementary and alternative health care services;
- (7) a notice that the patient has a right to complete and current information concerning the complementary and alternative health care practitioner's assessment and recommended complementary and alternative health care services that are to be provided, including the expected duration of the complementary and alternative health care services to be provided and the patient's right to be allowed access to the patient's records and written information from the patient's records;
- (8) a statement that patient records and transactions with the complementary and alternative health care practitioner are confidential unless the release of these records is authorized in writing by the patient or otherwise provided by law;
- (9) a statement that the patient has a right to coordinated transfer when there will be a change in the provider of complementary and alternative health care services; and
- (10) the name, address and telephone number of the department and notice that a patient may file complaints with the department; and

B. obtain a written acknowledgment from a patient, or if the patient cannot write an oral acknowledgment witnessed by a third party, stating that the patient has been provided with a copy of the information document. The patient shall be provided with a copy of the written acknowledgment, which shall be maintained for three years by the complementary and alternative health care practitioner providing the complementary and alternative health care service.

History: Laws 2009, ch. 141, § 5.

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

61-35-6. Applicability.

The following individuals shall not provide complementary and alternative health care services pursuant to the Unlicensed Health Care Practice Act [61-35-1 NMSA 1978]:

- A. former health care practitioners whose license, certification or registration has been revoked or suspended by any health care board and not reinstated;
- B. individuals convicted of a felony for a crime against a person who have not satisfied the terms of the person's sentence as provided by law;
- C. individuals convicted of a felony related to health care who have not satisfied the terms of the person's sentence as provided by law; and
- D. individuals who have been deemed mentally incompetent by a court of law.

History: Laws 2009, ch. 141, § 6.

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

61-35-7. Disciplinary actions.

If the department determines that a complementary and alternative health care practitioner practicing pursuant to the Unlicensed Health Care Practice Act [61-35-1 NMSA 1978] may have violated a provision of that act, it may take one or more of the following actions pursuant to the Uniform Licensing Act [61-1-1 NMSA 1978] against the complementary and alternative health care practitioner if that practitioner is found to have violated a provision of the Unlicensed Health Care Practice Act:

A. provide written notice to the complementary and alternative health care practitioner requesting the practitioner to correct the activity that is a violation of the Unlicensed Health Care Practice Act; this action shall be the first option if the offense is a violation of the disclosure requirements of the Unlicensed Health Care Practice Act;

B. issue a cease and desist order against the complementary and alternative health care practitioner pertaining to the provision of complementary and alternative health care services that are not in compliance with the provisions of the Unlicensed Health Care Practitioner [Practice] Act; or

C. impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

History: Laws 2009, ch. 141, § 7.

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

61-35-8. Duties of the superintendent.

The superintendent of regulation and licensing is expressly authorized to promulgate rules as necessary to implement the provisions of the Unlicensed Health Care Practice Act [61-35-1 NMSA 1978].

History: Laws 2009, ch. 141, § 8.

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

ARTICLE 36

Lactation Consultant Practice

Sec.

61-36-1. Recompiled.

61-36-2. Recompiled.

61-36-3. Recompiled.

Sec.

61-36-4. Recompiled.

61-36-5. Recompiled.

61-36-6. Recompiled.

61-36-1. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 20 recompiled and amended former 61-36-1 NMSA 1978 as 61-3B-1 NMSA 1978, effective May 18, 2022.

61-36-2. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-36-2 NMSA 1978 as 61-3B-2 NMSA 1978, effective May 18, 2022.

61-36-3. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 21 recompiled and amended former 61-36-3 NMSA 1978 as 61-3B-3 NMSA 1978, effective May 18, 2022.

61-36-4. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-36-4 NMSA 1978 as 61-3B-4 NMSA 1978, effective May 18, 2022.

61-36-5. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-36-5 NMSA 1978 as 61-3B-5 NMSA 1978, effective May 18, 2022.

61-36-6. Recompiled.

Recompilations. — Laws 2022, ch. 39, § 22 recompiled and amended former 61-36-6 NMSA 1978 as 61-3B-6 NMSA 1978, effective May 18, 2022.

ARTICLE 37

Tobacco Products

Sec.

- 61-37-1. Short title.
- 61-37-2. Definitions.
- 61-37-3. Prohibited sales; manufacturing; labeling; marketing; safety requirements.
- 61-37-4. Division; license issuance; manufacture, distribution or sale of tobacco products.
- 61-37-5. Manufacturer license requirements; application and renewal requirements; fees.
- 61-37-6. Distributor license requirements; application and renewal requirements; fees.
- 61-37-7. Retailer license requirements; application and renewal requirements; fees.
- 61-37-8. License application information changes.
- 61-37-9. Issuance of licenses; reasons for denial.
- 61-37-10. License transfer; notice of changes.
- 61-37-11. Tobacco products administration fund; created; purpose.
- 61-37-12. Fees retained by the division.

Sec.

- 61-37-13. Hearing procedure.
- 61-37-14. Documentary evidence of age and identity.
- 61-37-15. Vending machines; restrictions on sales of tobacco products.
- 61-37-16. Distribution of tobacco products as free samples prohibited.
- 61-37-17. Signs; point of sale.
- 61-37-18. Criminal penalties; unlicensed activities.
- 61-37-19. Manufacturers, distributors and retailers; violations; license suspension or revocation; administrative penalties.
- 61-37-20. Monitored compliance; inspections.
- 61-37-21. Authority of department of public safety.
- 61-37-22. Authority of the division.
- 61-37-23. Administrative authority and powers.
- 61-37-24. Preemption.
- 61-37-25. Applicability.

61-37-1. Short title.

This act may be cited as the "Tobacco Products Act".

History: Laws 2020, ch. 46, § 1.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 1 effective January 1, 2021.

61-37-2. Definitions.

As used in the Tobacco Products Act:

A. "child-resistant packaging" means packaging or a container that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful

amount of the substance contained therein within a reasonable time and not difficult for a normal adult to use properly, but does not mean packaging or a container that all such children cannot open or obtain a toxic or harmful amount within a reasonable time;

B. "contraband tobacco products" means any tobacco products possessed, sold, bartered or given in violation of the Tobacco Products Act;

C. "delivery sale" means a sale of tobacco products to a consumer in New Mexico in which:

(1) the consumer submits an order for the sale by telephone, over the internet or through the mail or another delivery system; and

(2) the tobacco product is shipped through a delivery service;

D. "delivery service" means a person, including the United States postal service, that is engaged in the delivery of letters, packages or containers;

E. "director" means the director of the alcoholic beverage control division of the regulation and licensing department;

F. "distribute" means to purchase and store a product and to offer the product for resale to retailers or consumers;

G. "distributor" means a person that distributes tobacco products in New Mexico, but does not include:

(1) a retailer;

(2) a manufacturer; or

(3) a common or contract carrier;

H. "division" means the alcoholic beverage control division of the regulation and licensing department;

I. "e-cigarette":

(1) means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other substances the use or inhalation of which simulates smoking; and

(2) includes any such device, or any part thereof, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or any other product, name or descriptor; but

(3) does not include any product regulated as a drug or device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq.;

J. "electronic nicotine delivery system" means an electronic device, including e-cigarettes, whether composed of a heating element and battery or an electronic circuit, that provides a vapor or aerosol of nicotine, the use or inhalation of which simulates smoking;

K. "knowingly attractive to minors" means packaging or labeling that contains:

(1) a cartoon-like character that mimics characters primarily aimed at entertaining minors;

(2) an imitation or mimicry of trademarks or trade dress of products that are or have been primarily marketed toward minors; or

(3) a symbol or celebrity image that is primarily used to market products to minors;

L. "licensee" means a holder of a license issued by the division pursuant to the Tobacco Products Act;

M. "manufacturer" means a person that manufactures, fabricates, assembles, processes or labels tobacco products or imports from outside the United States, directly or indirectly, a tobacco product for sale or distribution in the United States;

N. "minor" means an individual who is younger than twenty-one years of age;

O. "nicotine liquid" means a liquid or other substance containing nicotine where the liquid or substance is sold, marketed or intended for use in an electronic nicotine delivery system;

P. "person" means an individual, corporation, firm, partnership, copartnership, association or other legal entity;

Q. "retailer" means a person, whether located within or outside of New Mexico, that sells tobacco products at retail to a consumer in New Mexico; provided that the sale is not for resale;

R. "self-service display" means a display to which the public has access without the assistance of a retailer or the retailer's employee; and

S. "tobacco product" means a product made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed

or ingested by any other means, including cigars, cigarettes, chewing tobacco, pipe tobacco, snuff, e-cigarettes or electronic nicotine delivery systems.

History: Laws 2020, ch. 46, § 2.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 2 effective January 1, 2021.

61-37-3. Prohibited sales; manufacturing; labeling; marketing; safety requirements.

A. A person shall not knowingly, intentionally or negligently sell, offer to sell, barter or give a tobacco product to a minor.

B. A licensee shall not sell, offer to sell or deliver a tobacco product in a form other than an original manufacturer-sealed package, except for individually sold cigars or loose leaf pipe tobacco.

C. A licensee shall not sell, offer to sell or deliver nicotine liquid in this state unless such liquid is in child-resistant packaging, except that for the purpose of this subsection, "nicotine liquid" does not include nicotine liquid in a cartridge that is pre-filled and sealed by the manufacturer and that is not intended to be opened by the consumer.

D. A manufacturer shall not produce and a distributor or retailer shall not sell tobacco products that are knowingly attractive to minors.

History: Laws 2020, ch. 46, § 3.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 3 effective January 1, 2021.

61-37-4. Division; license issuance; manufacture, distribution or sale of tobacco products.

A. Except as provided in Subsection C of this section, the division shall issue licenses for the manufacture, distribution or sale of tobacco products in New Mexico to applicants who meet the requirements of the Tobacco Products Act.

B. The division shall issue or renew a license for the:

- (1) manufacture of tobacco products for a term of one year;
- (2) distribution of tobacco products for a term of one year; and
- (3) retail sale of tobacco products for a term of one year.

C. A license shall not be issued, retained, transferred or renewed pursuant to the Tobacco Products Act if any of the following conditions apply:

- (1) the applicant has had a manufacturer, distributor or retailer license revoked by the division or by another state;
- (2) the applicant is not in compliance with Subsection G of Section 7-12-9.1 NMSA 1978;
- (3) the location for the license or license transfer is within three hundred feet of a school; provided that this restriction does not apply to a location at which tobacco products have been lawfully manufactured, distributed or sold prior to July 1, 2020; or
- (4) the location for the license would result in a violation of a zoning or other ordinance of a governing body in which the proposed location would exist.

History: Laws 2020, ch. 46, § 4.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 4 effective January 1, 2021.

61-37-5. Manufacturer license requirements; application and renewal requirements; fees.

A. A person shall not manufacture tobacco products at any location in the state without first obtaining a manufacturer license issued by the division to that person for that location.

B. An application for a manufacturer license or manufacturer license renewal shall be submitted on a form prescribed by the division and shall include:

- (1) the name, telephone number, mailing address and email address of the applicant and:
 - (a) if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or
 - (b) if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;
- (2) the address of the applicant's principal place of business and every location where the applicant manufactures tobacco products;
- (3) documentation as required by the division affirming that the applicant will comply with applicable and proper tobacco products manufacturing practices as required pursuant to 21 USCA Section 387d(a) and will comply with any applicable health directives issued by the department of health pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978];
- (4) documentation as required by the division affirming that the applicant will submit the applicable ingredient listing to the federal secretary of health and human services as required pursuant to 21 USCA Section 387d(a)(1); and
- (5) a nonrefundable application fee not to exceed seven hundred fifty dollars (\$750) per location or a renewal fee not to exceed four hundred dollars (\$400) per location.

History: Laws 2020, ch. 46, § 5.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 5 effective January 1, 2021.

61-37-6. Distributor license requirements; application and renewal requirements; fees.

A. A person shall not distribute tobacco products from any location in the state without first obtaining a distributor license issued by the division to that person for that location.

B. An application for a distributor license or distributor license renewal shall be submitted on a form prescribed by the division and shall include:

- (1) the name, telephone number, mailing address and email address of the applicant and:
 - (a) if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or
 - (b) if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;
- (2) the address of the applicant's principal place of business and every location from which the applicant distributes tobacco products; and
- (3) a nonrefundable application fee not to exceed seven hundred fifty dollars (\$750) per location or a renewal fee not to exceed four hundred dollars (\$400) per location.

History: Laws 2020, ch. 46, § 6.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 6 effective January 1, 2021.

61-37-7. Retailer license requirements; application and renewal requirements; fees.

A. A person shall not sell tobacco products at any location in the state without first obtaining a retailer license issued by the division to that person or that person's employer for that location.

B. An application for a retailer license or for a retailer license renewal shall be submitted on a form prescribed by the division and shall include:

- (1) the name, telephone number, mailing address and email address of the applicant and:
 - (a) if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or
 - (b) if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;
- (2) the address of the applicant's principal place of business and every location where the applicant sells tobacco products; and
- (3) a nonrefundable application fee not to exceed seven hundred fifty dollars (\$750) per location or a renewal fee not to exceed four hundred dollars (\$400) per location.

History: Laws 2020, ch. 46, § 7.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 7 effective January 1, 2021.

61-37-8. License application information changes.

If the information submitted in an application pursuant to the Tobacco Products Act for a license or for a license renewal changes, the licensee shall notify the division within ten business days of the change. If a change in the information required for an application results in a violation of the Tobacco Products Act, the director may impose an administrative penalty as provided in that act.

History: Laws 2020, ch. 46, § 8.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 8 effective January 1, 2021.

61-37-9. Issuance of licenses; reasons for denial.

- A. Beginning January 1, 2021, the division shall begin issuing licenses.
- B. The division shall grant or deny an application for a license or for a license renewal made pursuant to the Tobacco Products Act after the complete application is submitted to the division. The division shall approve the application for issuance of a license or for a license renewal if the division determines that the applicant meets the requirements of the Tobacco Products Act and the rules promulgated pursuant to that act.
- C. If a complete application for a license or for a license renewal is denied, the division shall state the reasons for the denial. The applicant may reapply within thirty days after the date of the denial. The division shall not charge a fee for a reapplication made within that period.

History: Laws 2020, ch. 46, § 9.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 9 effective January 1, 2021.

61-37-10. License transfer; notice of changes.

- A. A license issued pursuant to the Tobacco Products Act shall not be transferred from the licensee to another person.
- B. The transfer of a license from one location to another may be approved by the division, provided that the licensee shall submit an application for license location transfer to the division for review. The division shall allow the transfer unless any of the conditions provided in Sections 4 [61-37-4 NMSA 1978] and 9 [61-37-9 NMSA 1978] of the Tobacco Products Act apply.

History: Laws 2020, ch. 46, § 10.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 10 effective January 1, 2021.

61-37-11. Tobacco products administration fund; created; purpose.

The "tobacco products administration fund" is created as a nonreverting fund in the state treasury. The fund consists of fees and administrative penalties collected by the division pursuant to the Tobacco Products Act, appropriations by the legislature, gifts, grants and donations. Money in the fund at the end of a fiscal year shall not revert to any other fund. The division shall administer the fund, and money in the fund is subject to appropriation by the legislature to the division for the administration of the Tobacco Products Act. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the superintendent of regulation and licensing or the superintendent's authorized representative.

History: Laws 2020, ch. 46, § 11.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 11 effective January 1, 2021.

61-37-12. Fees retained by the division.

All fees collected by the division pursuant to the Tobacco Products Act shall be deposited into the tobacco products administration fund.

History: Laws 2020, ch. 46, § 12; 2022, ch. 39, § 103.

The 2022 amendment, effective May 18, 2022, removed "administrative penalties" from the scope of the

section; in the section heading, deleted "and administrative penalties"; and after "All fees", deleted "and administrative penalties".

61-37-13. Hearing procedure.

If the division suspends or revokes a license or imposes an administrative penalty against a licensee, the licensee shall be entitled to a hearing pursuant to the rules promulgated by the division. The hearing shall be conducted by the director or a hearing officer appointed by the director and shall be held in the county in which the licensee is located. Hearings shall be open to the public. Subpoenas shall be issued and enforced in accordance with the provisions of Section 23 [61-37-23 NMSA 1978] of the Tobacco Products Act.

History: Laws 2020, ch. 46, § 13.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 13 effective January 1, 2021.

61-37-14. Documentary evidence of age and identity.

A. A retailer or an employee of a retailer shall not knowingly, intentionally or negligently fail to verify the age of a consumer purchasing tobacco products.

B. Except as provided in Subsection C of this section, evidence of the age and identity of a person attempting to procure tobacco products in person shall be shown by a valid document that contains a picture of that person and is issued by a federal, state, county, municipal, tribal or foreign government, including a motor vehicle driver's license or an identification card.

C. For each sale made through a delivery sales method, age verification shall be completed through an independent, third-party age verification service that establishes that a consumer is of legal age by comparing information available from public records to personal information entered by the consumer during the ordering process.

D. A retailer may ship tobacco products only to a consumer whose age has been verified pursuant to Subsection C of this section.

History: Laws 2020, ch. 46, § 14.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 14 effective January 1, 2021.

61-37-15. Vending machines; restrictions on sales of tobacco products.

A. Except as provided in Subsections B and C of this section, a retailer selling goods at a retail location in New Mexico shall not use a self-service display for tobacco products.

B. Tobacco products may be sold by vending machines only in age-controlled locations where minors are not permitted.

C. The sales and display of cigars may be allowed only in age-controlled locations where minors are not permitted.

History: Laws 2020, ch. 46, § 15. **Effective dates.** — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 15 effective January 1, 2021.

61-37-16. Distribution of tobacco products as free samples prohibited.

A. A person shall not provide free samples of tobacco products without the express written approval of the director.

B. The provisions of Subsection A of this section shall not apply to an individual who provides free samples of tobacco products, e-cigarettes or nicotine liquid containers in connection with the practice of cultural or ceremonial activities in accordance with the federal American Indian Religious Freedom Act or its successor act.

History: Laws 2020, ch. 46, § 16. **Cross references.** — For the federal American Indian Religious Freedom Act, see 42 U.S.C.
Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 16 effective January 1, 2021.

61-37-17. Signs; point of sale.

A retailer shall prominently display in the place where tobacco products are sold and where a tobacco product vending machine is located a printed sign or decal that reads as follows:

"IT IS ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO PURCHASE TOBACCO PRODUCTS."

History: Laws 2020, ch. 46, § 17. **Effective dates.** — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 17 effective January 1, 2021.

61-37-18. Criminal penalties; unlicensed activities.

A person who manufactures, distributes or sells tobacco products without a license required pursuant to the Tobacco Products Act is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978. Contraband tobacco products seized by the division or by a law enforcement agency as evidence of unlicensed activities shall be retained and disposed of pursuant to the Forfeiture Act [Chapter 31, Article 27 NMSA 1978]. The provisions of this section shall not apply to the sale of tobacco products between a minor and another minor.

History: Laws 2020, ch. 46, § 18. **Effective dates.** — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 18 effective January 1, 2021.

61-37-19. Manufacturers, distributors and retailers; violations; license suspension or revocation; administrative penalties.

The division may suspend or revoke a license of a licensee, require the use of identification verification software for a designated period of time or impose an administrative penalty against a licensee in an amount not to exceed ten thousand dollars (\$10,000), or any combination thereof, if the division finds that the licensee, an employee of the licensee or a contractor acting on behalf of the licensee has violated a provision of the Tobacco Products Act; provided, however, that upon a

fourth violation for the sale of a tobacco product to a minor occurring at the same location within three years of the first such violation, the retailer's license issued for that location shall be permanently revoked.

History: Laws 2020, ch. 46, § 19. **Effective dates.** — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 19 effective January 1, 2021.

61-37-20. Monitored compliance; inspections.

The alcoholic beverage control division of the regulation and licensing department, the department of public safety and the appropriate law enforcement authorities in each county and municipality may conduct random, unannounced inspections of facilities where tobacco products are sold, manufactured or distributed to ensure compliance with the provisions of the Tobacco Products Act.

History: Laws 2020, ch. 46, § 20.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 20 effective January 1, 2021.

61-37-21. Authority of department of public safety.

A. The department of public safety has authority over all investigations and enforcement activities required under the Tobacco Products Act, except for those provisions relating to the issuance, denial, suspension or revocation and administrative sanctions of licenses unless its assistance is requested by the director.

B. Following the issuance of a citation pursuant to the provisions of the Tobacco Products Act, the department of public safety or the law enforcement agency of a municipality or county shall report alleged violations of that act to the division.

C. The director may request the investigators from the department of public safety to investigate licensees or activities that the director has reasonable cause to believe are in violation of the Tobacco Products Act.

History: Laws 2020, ch. 46, § 21.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 21 effective January 1, 2021.

61-37-22. Authority of the division.

A. The division has the authority over all matters relating to the issuance, denial, suspension, revocation and other administrative penalties or transfer of licenses under the Tobacco Products Act. The director may request the department of public safety to provide investigatory and enforcement support as deemed necessary.

B. The director has rulemaking authority pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 2020, ch. 46, § 22.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 22 effective January 1, 2021.

61-37-23. Administrative authority and powers.

A. For the purpose of administering the licensing provisions of the Tobacco Products Act, the director is authorized to examine and to require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require that person to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. The director, through the legal counsel for the division, is vested with the power to issue subpoenas. In no case shall a subpoena be made returnable less than five days from the date of service.

C. A subpoena issued by the division shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena and shall bear the seal of the division and be attested to by the director.

D. After service of a subpoena upon a person, if a person neglects or refuses to appear or produce records or other evidence in response to the subpoena or neglects or refuses to give testimony, as required, the director may invoke the aid of the district courts in the enforcement of the subpoena. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce the books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

History: Laws 2020, ch. 46, § 23.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 23 effective January 1, 2021.

61-37-24. Preemption.

When a municipality or county, including a home rule municipality or an urban county, adopts an ordinance, charter amendment or regulation pertaining to the sales of tobacco products, the ordinance, charter amendment or regulation shall be consistent with the provisions of the Tobacco Products Act.

History: Laws 2020, ch. 46, § 24.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 24 effective January 1, 2021.

61-37-25. Applicability.

The provisions of the Tobacco Products Act do not apply to the lawful purchase or use by a minor of a tobacco-cessation product approved by the federal food and drug administration.

History: Laws 2020, ch. 46, § 25.

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 25 effective January 1, 2021.

CHAPTER 62

Electric, Gas and Water Utilities

Art.

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ARTICLE 1

Incorporation and Powers of Utilities

Sec.

- 62-1-1. Incorporation.
62-1-1.1. Foreign corporations; powers.
62-1-2. Acquisition of water rights; placing of equipment over roads, highways and waters.
62-1-3. Use of highways and streets; power of county commissioners.

Sec.

- 62-1-4. Eminent domain; surveys; entry on property; crossing right-of-way of another corporation.
62-1-5. General powers.
62-1-6. Foreign municipal corporation; ownership; supervision.
62-1-7. Applicability.

62-1-1. [Incorporation.]

Corporations for the generation, production, transmission, distribution, sale or utilization of gas, electricity or steam for lighting, heating, power, manufacturing or other purposes may be organized under the general incorporation laws of this state.

History: Laws 1909, ch. 141, § 1; 1912, ch. 50, § 1; Code 1915, § 1021; C.S. 1929, § 32-401; 1941 Comp., § 72-101; 1953 Comp., § 68-1-1.

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is

ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For requirement of certificate of public convenience and necessity before new utility construction or operation, see 62-9-1 NMSA 1978.

For municipal utilities, see 3-23-1 to 3-23-10, 3-24-1 to 3-24-10, 3-25-1 to 3-25-6, 3-26-1 to 3-26-3, 3-27-1 to 3-27-9 and 3-28-1 to 3-28-20 NMSA 1978.

For municipal franchises, see 3-42-1 and 3-42-2 NMSA 1978.

For powers of counties, see 4-37-1 NMSA 1978.

For Uniform Unclaimed Property Act, see Chapter 7, Article 8A NMSA 1978.

For Business Corporation Act, see Chapter 53, Articles 11 to 18 NMSA 1978 NMSA 1978.

For certification of telephone and telegraph companies, see 63-9-1 to 63-9-19 NMSA 1978.

ANNOTATIONS

Provisions applicable to telephone and telegraph companies. — Telephone and telegraph companies are subject to the provisions of this section, Sections 62-1-2, 62-1-3 and 3-42-2 NMSA 1978, *Mountain States Tel. & Tel. Co. v. Town of Belen*, 1952-NMSC-053, 56 N.M. 415, 244 P.2d 1112.

A telephone company which generates electricity for the conduct of its business comes within the purview of Sections 62-1-1 to 62-1-3 NMSA 1978. *City of Roswell v. Mountain States Tel. & Tel. Co.*, 78 F.2d 379 (10th Cir. 1935).

Power of eminent domain. — Corporation, engaged as a public utility in furnishing telephone service to the public, has the power of eminent domain. *State Hwy. Comm'n v. Ruidoso Tel. Co.*, 1963-NMSC-150, 73 N.M. 487, 389 P.2d 606.

Authorized foreign public utility may exercise eminent domain. — Under Sections 53-17-2 and 62-1-4 NMSA 1978 and this section, a foreign public utility authorized to do business in this state has the same right as a domestic public utility to exercise the power of eminent domain in this state. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Supervision of foreign public utilities. — Foreign public utilities authorized to do business in this state are subject to the same supervision as utilities incorporated under the laws of this state. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Sanitary projects association not public utility. — A sanitary projects association (see Article 29 of Chapter 3 NMSA 1978) was not transformed into a public utility by selling water to a limited number of nonmember water haulers and was not subject to the public service commission's (now public regulation commission's) regulatory jurisdiction. *El Vado De Los Cerrillos Water Ass'n v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-041, 115 N.M. 784, 858 P.2d 1263.

Provisions applicable to telephone and telegraph companies. — Sections 62-1-1 to 62-1-3 NMSA 1978 are applicable to telephone utilities. 1963-64 Op. Att'y Gen. No. 63-66.

Application of provisions to pipeline companies. 1973 Op. Att'y Gen. No. 73-26 and 1957-58 Op. Att'y Gen.

No. 57-124 (rendered prior to 1996 amendment of N.M. Const., art. XI, §2).

ANNOTATIONS

Law reviews. — For article, "The Regulation of Public Utilities," see 10 Nat. Res. J. 827 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations § 150; 64 Am. Jur. 2d Public Utilities §§ 1, 2, 4, 82; 74 Am. Jur. 2d Telecommunications §§ 4, 8.

Authority from public official as affecting responsibility of public service corporation infringing property rights, 1 A.L.R. 403.

Perpetual franchise, 2 A.L.R. 1105.

Bank which has acquired a public service plant bound to continue its operation, 8 A.L.R. 248.

Irrigation company as a public utility, 8 A.L.R. 268, 15 A.L.R. 1227.

What are "public utilities" within provisions relating to municipal purchase, construction or repair of public utility, 9 A.L.R. 1033, 35 A.L.R. 592.

Municipal corporations owning or operating a public utility as within public utility acts, 10 A.L.R. 1432, 18 A.L.R. 946.

Right of public utility company to discontinue its entire service, 11 A.L.R. 252.

Contract for service by public utility in consideration of conveyance of property as affected by public utility acts, 11 A.L.R. 460, 41 A.L.R. 257.

Regaining of private status by a corporation after having become subject to the duties and obligations of a public utility, 34 A.L.R. 175.

Competition by grantor of nonexclusive franchise as violation of constitutional rights of franchise holder, 114 A.L.R. 192.

Right of public utility not having an exclusive franchise to protection against, or damages for, interference with its operations, property or plant by a competitor, 119 A.L.R. 432.

Conclusiveness of charter as regards character of corporation as a public utility corporation, 119 A.L.R. 1019.

Right of public utility to discontinue line or branch on ground that it is unprofitable, 10 A.L.R.2d 1121.

Special requirements of consumer as giving rise to liability, based on implied contract, for failure to furnish particular amount of electricity, gas or water, 13 A.L.R.2d 1233.

Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority, 85 A.L.R.4th 894.

Liability of owner of wires, poles, or structures struck by aircraft for resulting injury or damage, 49 A.L.R.5th 659.

18 C.J.S. Corporations § 25 et seq.; 29 C.J.S. Electricity § 10(1); 38A C.J.S. Gas §§ 56, 57; 73B C.J.S. Public Utilities § 15; 82 C.J.S. Steam § 2; 86 C.J.S. Telecommunications § 18.

62-1-1.1. Foreign corporations; powers.

Foreign corporations for the generation, production, transmission, distribution, sale or utilization of gas, electricity or steam for lighting, heating, power, manufacturing or other purposes, which are duly qualified to do business in this state and are public utilities under the New Mexico Public Utility Act, Section 62-3-1, et seq., 1978, Annotated [62-13-1 NMSA 1978], shall have the same rights and privileges including the power of eminent domain as domestic corporations of like character.

History: Laws 1979, ch. 259, § 1.

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of

Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*,

100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended; a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-1-2. [Acquisition of water rights; placing of equipment over roads, highways and waters.]

Such corporations may acquire water rights for power plants or other purposes either by purchase, by appropriation under the laws of this state or of the United States or by acquiring rights of persons or corporations having made such appropriations or filed applications therefor, and are authorized to place their pipes, poles, wires, cables, conduits, towers, piers, abutments, stations and other necessary fixtures, appliances and structures, upon or across any of the public roads, streets, alleys, highways and waters in this state subject to the regulation of the county commissioners and local municipal authorities.

History: Laws 1909, ch. 141, § 2; Code 1915, § 1022; C.S. 1929, § 32-402; 1941 Comp., § 72-102; 1953 Comp., § 68-1-2.

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For regulation of use of state highways by public utilities, see 67-3-12C and 67-3-41 NMSA 1978.

For appropriation of water rights, see 72-5-1 NMSA 1978 et seq.

ANNOTATIONS

This section and Section 62-1-3 NMSA 1978 must be construed together. *City of Roswell v. Mountain States Tel. & Tel. Co.*, 78 F.2d 379 (10th Cir. 1935).

Local governments may require utilities to bear costs of system relocation. — New Mexico has adopted the common-law rule permitting local governments to

require utilities to bear the costs of system relocation required for public safety; thus, safety-related relocation costs are to be treated like other costs of service. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

A tariff approved by the public regulation commission permitting the Public Service Company of New Mexico to recover the costs of compliance with an ordinance requiring underground relocation was ultra vires in violation of the common-law rule where the relocation was a matter of public safety and the commission had made no finding that the ordinance was unreasonable. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

Provisions applicable to telephone utilities. — Sections 62-1-1 to 62-1-3 NMSA 1978 are applicable to telephone utilities. 1963-64 Op. Att'y Gen. No. 63-66.

Law reviews. — For article, "Water Requirements for Coal-fired Power Plants," see 24 Nat. Res. J. 137 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Easements § 99; 27A Am. Jur. 2d Energy and Power Sources, § 167; 61 Am. Jur. 2d Pipelines § 27; 74 Am. Jur. 2d Telecommunications § 15.

Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway, 51 A.L.R.4th 602.

29 C.J.S. Electricity §§ 15, 16; 38A C.J.S. Gas §§ 85, 86; 86 C.J.S. Telecommunications §§ 56, 119-123, 125.

62-1-3. Use of highways and streets; power of county commissioners.

The boards of county commissioners of the several counties are authorized to permit corporations organized pursuant to Section 62-1-1 NMSA 1978, public utilities under the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] and companies that provide public telecommunications service pursuant to the New Mexico Telecommunications Act [Chapter 63, Article 9A NMSA 1978] to use the public highways and the streets and alleys of unincorporated towns for their pipes, poles, wires, cables, conduits, towers, transformer stations and other fixtures, appliances and structures; provided that such use shall not unnecessarily obstruct public travel and provided further that the boards of county commissioners and municipal authorities of incorporated cities and towns are authorized to grant franchises not exceeding twenty-five years' duration to corporations for such purposes within their respective jurisdictions. A board of commissioners is authorized to impose charges for reasonable actual expenses incurred in the granting of any franchise pursuant to this section.

History: Laws 1909, ch. 141, § 3; Code 1915, § 1023; C.S. 1929, § 32-403; 1941 Comp., § 72-103; Laws 1949, ch. 8, § 1; 1953 Comp., § 68-1-3; Laws 1987, ch. 155, § 1.

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For regulation of use of state highways by public utilities, see 67-3-12C, 67-3-41 NMSA 1978.

The 1987 amendment, effective June 19, 1987, substituted "corporations organized pursuant to Section 62-1-1 NMSA 1978 . . . Telecommunications Act" for "such corporation" near the beginning of the first sentence, added the second sentence and made minor changes in language throughout the section.

ANNOTATIONS

This section and Section 62-1-2 NMSA 1978 must be construed together. *City of Roswell v. Mountain States Tel. & Tel. Co.*, 78 F.2d 379 (10th Cir. 1935).

Telecommunications companies. — The authority of home rule municipalities to enter into contracts and create franchises with telecommunications companies is well established in New Mexico. *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258 (10th Cir. 2004) (decided prior to the 1996 amendment to N.M. Const., art. XI, §2).

Franchise fees are not rates. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not rates as defined in Section 62-3-3 NMSA 1978 and do not fall within the jurisdiction of the public regulation commission. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Franchise fees are not taxes. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not taxes that the public regulation commission may consider when setting rates. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Franchise fees are not items included in adjustment clauses. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not within the jurisdiction of the public regulation commission by analogy to fuel and purchased power adjustment clauses, over which the commission has jurisdiction under Section 62-8-7 NMSA 1978. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Line item charges for franchise fees. — The public regulation commission did not have jurisdiction to enter an order requiring a public utility to stop including on customer's bills the franchise fee charges paid by the utility to a county for the right to use county right-of-way to deliver utility service to county residents and businesses. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Meaning of "franchise." — The term "franchise" was used in generally accepted sense of grant of right to use highways, streets and alleys, rather than exercise of police power respecting their use. The consent of the state becomes effective when the franchise is obtained. *City of Roswell v. Mountain States Tel. & Tel. Co.*, 78 F.2d 379 (10th Cir. 1935).

Highway acquired by prescription may be used for normal communication methods. — A public highway acquired and established by prescription, and which was recognized and maintained by the corporate authorities of a county as a public highway, was in no way less than a public highway acquired by dedication, by condemnation or by authority of any other law of New Mexico. In any case, what was ordinarily acquired was an easement, by which the state or its political subdivisions were authorized by law to use the lands, lying within the boundaries of the streets and highways, for all lawful purposes consistent with every reasonable method of travel, transportation and communication for which public streets and highways are normally used. *Hall v. Lea Cnty. Elec. Coop.*, 1968-NMSC-040, 78 N.M. 792, 438 P.2d 632.

Electric power line is permissible use of highway. — The construction and maintenance of an electric power or transmission line, within the boundaries of a public highway, were consistent with the permissible uses to be made of a public highway easement and do not constitute an additional burden or servitude. *Hall v. Lea Cnty. Elec. Coop.*, 1968-NMSC-040, 78 N.M. 792, 438 P.2d 632.

Local ordinance not preempted by state law. — The City of Santa Fe ordinance which established procedures for telecommunications providers seeking access to city-owned rights-of-way is not preempted by state law. *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258 (10th Cir. 2004).

County franchise authorizes occupying streets of later village. — Telephone companies are included in the language of Section 3-42-2 NMSA 1978, and a franchise granted by a county board before incorporation of a village is adequate authority for occupying streets of the village and doing business until such time as the village itself offers a fair and equitable franchise for a maximum number of years and until a reasonable time has passed in which it may be considered by the company involved. *Village of Ruidoso v. Ruidoso Tel. Co.*, 1948-NMSC-067, 52 N.M. 415, 200 P.2d 713.

Town need accept only works actually constructed or started under county franchise. — In order to compel a town, incorporated after the granting of a franchise by the county commissioners, to accept such franchise, it was necessary that the holder of the franchise had erected or constructed, or in good faith commenced, the erection or construction of the works. *Village of Hobbs v. Mann*, 1935-NMSC-002, 39 N.M. 76, 39 P.2d 1025.

Authority to charge franchise fee. — A county board of commissioners may enter into franchise agreements with utility companies and impose a franchise fee in exchange for the county's reasonable expenses incurred in granting the franchise and for the utilities' use of public highways, streets and alleys under the franchise agreements. 2014 Op. Att'y Gen. No. 14-01.

County regulations must be reasonable and related to health and safety. — The statutory grant of regulatory powers to county commissions contained in this section is very general, but such regulations would have to be reasonable and related to public health and safety - in other words, to the design, construction, operation and maintenance of the facility. 1973 Op. Att'y Gen. No. 73-26.

County may not impose fees or rental charges. — There is no statutory authority for a county to impose fees or rental charges on a utility holding a certificate of public convenience and necessity from the public service commission (now public regulation commission) for use of rights-of-way of county roads. 1973 Op. Att'y Gen. No. 73-26.

City need not recognize franchise without construction in annexed territory. — A city is not bound by law to recognize the county franchise issued to a private company to operate in territories which have

subsequently been annexed by the city, in which territories no construction of utility facilities has been commenced. 1964 Op. Att'y Gen. No. 64-129.

Application of provisions to telephone companies. — Sections 62-1-1 to 62-1-3 NMSA 1978 are applicable to telephone utilities. 1963-64 Op. Att'y Gen. No. 63-66.

County may not impose franchise tax. — A county, in the process of granting a franchise to a public utility for operation in the county, may not exact from the utility a franchise tax. 1957-58 Op. Att'y Gen. No. 57-51.

Application of provisions to pipeline companies. 1973 Op. Att'y Gen. No. 73-26 and 1957-58 Op. Att'y Gen. No. 57-124.

Cost of moving lines need not be reimbursed. — Southwestern public service company is not entitled under its franchise and under applicable statutes to be

reimbursed for the cost of moving its transmission lines. 1955-56 Op. Att'y Gen. No. 55-6270.

County may not regulate use of state highway. — County commissioners have no right to grant any easement to a public utility over a state highway, the right-of-way of which came under the control of the state highway commission (now state transportation commission) after 1917. 1933-34 Op. Att'y Gen. 33-681 and 1973 Op. Att'y Gen. No. 73-26.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 245, 247, 249-265, 278.

Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway, 51 A.L.R.4th 602.

62-1-4. Eminent domain; surveys; entry on property; crossing right-of-way of another corporation.

A. Corporations organized pursuant to Section 62-1-1 NMSA 1978 are authorized to enter upon any property belonging to the state or to persons, firms or corporations for the purpose of making surveys and from time to time to appropriate so much of such property, not exceeding a strip one hundred feet wide in any one place, as may be necessary for their purpose. The corporations have the right of access to such property to construct and place their lines, pipes, poles, cables, conduits, towers, stations, fixtures, appliances and other structures and to repair them. If a corporation cannot agree with the owners as to a right-of-way or the compensation for a right-of-way, the corporation may proceed to obtain the right-of-way in the manner provided by law for condemnation of such property. Where it is necessary to cross the right-of-way of another corporation, the crossing shall be effected either by mutual agreement or in the manner now provided by law for the crossing of one railroad by another railroad; provided that the construction of any electric transmission lines crossing the right-of-way of a railroad shall comply with the minimum standards of the national electric safety code. When it is necessary for a corporation to construct any transmission line and associated facilities for the transmission of electrical power requiring a width for right-of-way of greater than one hundred feet, unless that width is agreed to by the parties, the applicant for the right-of-way shall apply to the New Mexico public utility commission as provided in Section 62-9-3.2 NMSA 1978 for a determination of the width necessary for the right-of-way for the transmission line.

B. For the purposes of this section, "corporation" means individuals, firms, partnerships, companies, municipalities, rural electric cooperatives organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978], lessees, trustees or receivers appointed by any court.

History; Laws 1909, ch. 141, § 4; Code 1915, § 1024; C.S. 1929, § 32-404; 1941 Comp., § 72-104; 1953 Comp., § 68-1-4; Laws 1980, ch. 20, § 17; 1993, ch. 282, § 19.

Compiler's notes. — Laws 1937, ch. 100, referred to in Subsection B, was repealed by Laws 1939, ch. 47, § 34.

Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For eminent domain proceedings, see Chapter 42A, NMSA 1978.

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "corporation" and "right-of-way" for references to "they" and "the same", substituted "New Mexico public utility commission" for "public service commission" and made stylistic changes throughout the subsection; and deleted "whatsoever" at the end of Subsection B.

ANNOTATIONS

Eminent domain matter of public policy. — The granting of the power of eminent domain, and the parameters thereto, is a matter of public policy for the legislature's determination. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Section authorizes entry by utility. — This section authorizes utility to enter land to survey and to appropriate land for the erection of power lines. *Zobel v. Public Serv. Co.*, 1965-NMSC-021, 75 N.M. 22, 399 P.2d 922.

Regardless of validity of utilities easement. — That electric power utility may have entered onto premises under an easement which landowners alleged was invalid would not make unlawful utility's entry onto premises pursuant to statute granting public utilities such right of entry. *Garver v. Public Serv. Co.*, 1966-NMSC-261, 77 N.M. 262, 421 P.2d 788.

Right to damages in inverse condemnation. — This section gives the right to recover damages in inverse condemnation. *Kaiser Steel Corp. v. W.S. Ranch Co.*, 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986.

Authorized foreign public utility may exercise eminent domain. — Under Sections 53-17-2 and 62-1-1 NMSA 1978 and this section, a foreign public utility authorized to do business in this state has the same right as a domestic public utility to exercise the power of eminent domain in this state. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Supervision of foreign public utilities. — Foreign public utilities authorized to do business in this state are subject to the same supervision as utilities incorporated under the laws of this state. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Authorized condemnor may be liable in trespass. — An authorized condemnor may be liable in trespass to a property owner for taking more land than is reasonably necessary or for causing excessive damage by the manner in which the taking occurs, but only when there is evidence of fraud, bad faith or gross abuse of discretion. *North v. Public Serv. Co.*, 1983-NMCA-124, 101 N.M. 222, 680 P.2d 603, cert. denied, 101 N.M. 11, 677 P.2d 624.

Damages for trespass when authorized condemnor is liable cover only that portion of the damage over and above what results from the taking itself. *North v. Public Serv. Co.*, 1983-NMCA-124, 101 N.M. 222, 680 P.2d 603, cert. denied, 101 N.M. 11, 677 P.2d 624.

Procedure for compensation for prior entry is exclusive. — In those jurisdictions in which there may be a constitutional taking of property by virtue of an exercise of the power of eminent domain prior to the payment of compensation, such procedure is justified by reason of legislative provision for an adequate method of obtaining just compensation by the owner. Under such circumstances the statutory remedy is deemed exclusive, and the owner is prevented from asserting the ordinary common-law actions arising from interference with his title or possession. *Kaiser Steel Corp. v. W.S. Ranch Co.*, 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986.

Landowner cannot assert common-law action for damages. *Zobel v. Pub. Serv. Co.*, 1965-NMSC-021, 75 N.M. 22, 399 P.2d 922.

Trespass lies where there is no right to condemn. — Where parties are mistaken in their belief that they had the right to condemn, a trespass action would be proper.

Kaiser Steel Corp. v. W.S. Ranch Co., 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986.

When consequential damages permitted. — Where a utility takes possession of property and grades roads outside the 100-foot easement allowed by Section 62-1-4 NMSA 1978, the condemnees are entitled to consequential damages if they can prove that the value of their property depreciated by reason of the entry and grading. *El Paso Elec. v. Real Estate Mart, Inc.*, 1982-NMCA-101, 98 N.M. 490, 650 P.2d 12, cert. denied, 98 N.M. 590, 651 P.2d 636.

Stipulation as to power of court to award damages held binding. — Stipulation is binding on the parties and properly given effect on remand where it was agreed that if a gas utility seeking to enjoin erection of a dwelling over its main line was found not to have a prescriptive easement, evidence of damages for the line crossing defendant's property would be considered by the court. *Southern Union Gas Co. v. Cantrell*, 1953-NMSC-092, 57 N.M. 612, 261 P.2d 645.

Condemnees may appeal although warrants have been issued to attorneys. — Where the clerk issued warrants to attorneys for condemnees for amounts of awards in eminent domain, but these warrants were not delivered to or endorsed by condemnees and funds that were deposited with clerk remained in hands of clerk, condemnees had not received benefit from judgment and were not barred from appealing judgment. *AT & T Co. v. Walker*, 1967-NMSC-049, 77 N.M. 755, 427 P.2d 267.

As to right to trial by jury, and waiver thereof. *El Paso Elec. v. Real Estate Mart, Inc.*, 1982-NMCA-101, 98 N.M. 490, 650 P.2d 12, cert. denied, 98 N.M. 590, 651 P.2d 636.

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 300, 312.

Applicability of zoning regulations to projects of non-governmental public utility as affected by utility's power of eminent domain, 87 A.L.R.3d 1265.

Unsuitability of powerline or other wire, or related structure, as element or damages in easement condemnation proceeding, 97 A.L.R.3d 587.

Eminent domain: review of electric power company's location of transmission line for which condemnation is sought, 19 A.L.R.4th 1026.

Eminent domain: unity or contiguity of separate properties sufficient to allow damages for diminished value of parcel remaining after taking of other parcel, 59 A.L.R.4th 308.

Eminent Domain: compensability of loss of visibility of owner's property, 7 A.L.R.5th 113.

Validity and construction of provision of Cable Communications Policy Act (47 USC § 541(a)(2)) allowing cable companies access to utility easements on private property, 113 A.L.R. Fed. 523.

29A C.J.S. Eminent Domain §§ 25, 207, 213, 219.

62-1-5. [General powers.]

In addition to the powers conferred by the general incorporation laws of the state, any corporation for one or more of the purposes mentioned in Section 62-1-1 NMSA 1978 organized under the laws of New Mexico may construct, maintain, extend, own, purchase or lease any plant, line or lines whether wholly within or wholly or partly without this state, and shall have the power to connect with or attach to the line or lines of other corporations or individuals, to join with other corporations or individuals in constructing, maintaining or operating such line or lines upon such terms as may be agreed upon, and to consolidate with other corporations organized for similar purposes under the laws of this state or of any other territory, state or country and to purchase, hold, own and vote the stock or securities of other corporations.

History: Laws 1909, ch. 141, § 5; Code 1915, § 1025; C.S. 1929, § 32-405; 1941 Comp., § 72-105; 1953 Comp., § 68-1-5.

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of

no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Public utility may require a deposit to assure payment of accumulating charges for service or for protection of utility-owned equipment such as meters. 1957-58 Op. Att'y Gen. No. 57-101.

A public service company may enforce a regulation requiring a customer to make a reasonable deposit or payment in advance. Such a regulation enables the company to assure itself of compensation for its service and to protect itself against unknown or irresponsible persons. 1957-58 Op. Att'y Gen. No. 57-101.

62-1-6. Foreign municipal corporation; ownership; supervision.

A. Any municipal corporation located in another state and within twenty-five miles of the boundary of the state of New Mexico that has heretofore acquired or hereafter acquires property and facilities for the production, transmission and distribution of electricity, a part of which property and facilities is located in New Mexico, has full rights to own the property and facilities in New Mexico and to enjoy and use the property and facilities in all respects as might a private owner situated in New Mexico. The New Mexico public utility commission shall have general and exclusive power and jurisdiction to regulate and supervise the rates charged and service regulations made by such municipal corporations for electricity supplied by them to consumers in New Mexico in the manner provided for regulation and supervision of rates and service regulations for private corporations under the provisions of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] to the same extent that it has now or hereafter may have jurisdiction over private utility corporations, and to do all things necessary and convenient in the exercise of that power and jurisdiction. The municipal corporation shall be subject to the laws of the state of New Mexico now existing or hereafter amended or enacted as to foreign corporations, shall designate a statutory agent resident in New Mexico upon whom process against the municipal corporation may be served and may sue and be sued in this state as a foreign corporation.

B. The state and its political subdivisions, notwithstanding any provisions contained in Chapter 62, Article 1 NMSA 1978, shall assess for taxation the property of any such foreign municipal corporation and shall levy taxes against its property and facilities in New Mexico in the same manner and to the same extent as electric properties owned by private corporations are now or may hereafter be taxed in this state.

C. The provisions of this section shall not operate to prevent a municipal corporation located in another state and further than twenty-five miles from the boundary of the state of New Mexico from owning any interest in a jointly owned generating facility.

History: 1941 Comp., § 72-106, enacted by Laws 1943, ch. 100, § 1; 1953 Comp., § 68-1-6; Laws 1979, ch. 260, § 16; 1993, ch. 282, § 20.

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, in Subsection A, rewrote the first sentence, divided the former second sentence into the present second and third

sentences, in the present second sentence, substituted "New Mexico public utility commission" for "New Mexico public service commission"; "them" for "such municipal corporation" preceding "to consumers", and "the Public Utility Act" for "Chapter 84 of the Laws of 1941", and in the present third sentence, added "The" at the beginning and deleted "foreign" preceding "municipal" near the end of the sentence; and, in Subsection B, deleted "of New Mexico" following "state", substituted "Chapter 62, Article 1 NMSA 1978" for "this act", and made minor stylistic changes.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 374, 385; 71 Am. Jur. 2d State and Local Taxation §§ 438 to 442.

73B C.J.S. Public Utilities §§ 72, 129 to 138; 84 C.J.S. Taxation §§ 118, 184, 427, 444.

62-1-7. [Applicability.]

That nothing in this act [62-1-6, 62-1-7 NMSA 1978] shall be construed to grant permission to any municipal corporation located outside the state of New Mexico to own or operate distribution facilities in New Mexico for the purpose of selling electricity to consumers in New Mexico who reside more than two (2) miles from the boundary of the state of New Mexico.

History: 1941 Comp., § 72-107, enacted by Laws 1943, ch. 100, § 2; 1953 Comp., § 68-1-7.

Compiler's notes. — Sections 62-1-1 to 62-1-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 1 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82,

as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ARTICLE 2

Incorporation and Powers of Waterworks

Sec. 62-2-1. Companies for supplying water; articles of incorporation.

62-2-2. Contents of articles of incorporation.

62-2-3. Filing of articles; certified copies.

62-2-4. General powers.

62-2-5. Additional powers.

62-2-6. Directors; qualifications; election.

62-2-7. Quorum in directors' meeting.

62-2-8. Meetings of directors.

62-2-9. Transfer of shares.

62-2-10. Subscriptions to stock; payment; notice of assessment; sale of stock.

62-2-11. Increase or decrease of capital stock.

62-2-12. Commencement of business within one year.

Sec.

62-2-13. Voluntary dissolution.

62-2-14. Powers of directors after dissolution.

62-2-15. Borrowing money; bonds; mortgages.

62-2-16. Eminent domain.

62-2-17. Construction of works; eminent domain.

62-2-18. Acquiring land of minors and incapacitated persons.

62-2-19. Use of materials on state lands.

62-2-20. Corporations for serving cities and towns; rights and privileges.

62-2-21. Corporations for serving cities and towns; laying mains in streets; service.

62-2-22. Irrigation companies; restrictions on use of water.

62-2-1. Companies for supplying water; articles of incorporation.

Any five persons who desire to form a company for the purpose of constructing and maintaining reservoirs and canals or ditches and pipelines for supplying water for irrigation, mining, manufacturing, domestic and other public uses, including cities and towns, and for the improvement of lands in connection therewith shall make and sign articles of incorporation that shall be acknowledged before the secretary of state or some person authorized by law to take the acknowledgment of conveyances of real estate. When so acknowledged, the articles shall be filed with the secretary of state.

History: Laws 1887, ch. 12, § 1; C.L. 1897, § 468; Code 1915, § 1026; C.S. 1929, § 32-406; 1941 Comp., § 72-201; 1953 Comp., § 68-2-1; 2013, ch. 75, § 23.

Compiler's notes. — Prior to the 1915 Code, this section provided for filing of articles with the secretary of the territory.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For municipal water facilities, *see* 3-27-1 to 3-27-9 NMSA 1978.

For municipal water or natural gas associations, *see* Chapter 3, Article 28 NMSA 1978.

For use of waters and regulation of water by municipalities, *see* 3-53-1 to 3-53-5 NMSA 1978.

For certification of water and wastewater plant operators, *see* 61-33-1 to 61-33-9 NMSA 1978.

For community springs, tanks, reservoirs and ponds, *see* 72-10-1 to 72-10-10 NMSA 1978.

The 2013 amendment, effective July 1, 2013, required that articles of incorporation of water companies be filed with the secretary of state; added the title of the section; in the first sentence, after "towns, and for the", deleted "purpose of colonization and the" and after "lands in connection therewith" deleted "for either or both of said objects, either jointly or separately"; and in the second

sentence, after "filed with the", deleted "state corporation commission" and added "secretary of state".

ANNOTATIONS

Diversion of water for domestic purposes is public purpose. — The diversion and distribution of water for irrigation and other domestic purposes is a public purpose. *Albuquerque Land & Irrigation Co. v. Gutierrez*, 1900-NMSC-017, 10 N.M. 177, 61 P. 357, *aff'd*, 188 U.S. 545, 23 S. Ct. 338, 47 L. Ed. 588 (1903).

Legislature has impliedly declared condemnation for water conveyance is for public use. — The legislature, in Section 72-1-5 NMSA 1978, has given to persons, firms, associations and corporations the right to condemn land right-of-way for the purpose of conveying water for beneficial uses. Since the power of eminent domain cannot be exercised without a "public use" being present, the legislature has impliedly declared such a "public use" to be present in such conveyance of water. *Kaiser Steel Corp. v. W.S. Ranch Co.*, 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986.

Company seeking to divert water need not own lands to be irrigated. — It is not necessary that the company seeking to divert the water be the owner of the lands to be irrigated, or be employed by the owners, provided the water is used beneficially within a reasonable time. *Albuquerque Land & Irrigation Co. v. Gutierrez*,

1900-NMSC-017, 10 N.M. 177, 61 P. 357, *aff'd*, 188 U.S. 545, 23 S. Ct. 338, 47 L. Ed. 588 (1903).

Application need not be made in name of all persons to be benefited. — Sections 62-2-1 to 62-2-22 NMSA 1978 relating to the incorporation of waterworks companies and the powers which such companies may exercise, do not require that an application to appropriate public waters for a beneficial use must be made by or in the names of all persons who may ultimately use or be benefited by such use. *Mathers v. Texaco, Inc.*, 1966-NMSC-226, 77 N.M. 239, 421 P.2d 771.

Applicant may acquire right-of-way through existing ditch. — An applicant for the appropriation of waters for irrigation purposes may acquire by condemnation proceedings the right to use of the project, and a right-of-way through an existing ditch or canal of another appropriator, by enlargement. 1915-16 Op. Att'y Gen. No. 15-1508.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies § 1 et seq.

Public utility, acts, applicability to municipal corporation operating water plant, 18 A.L.R. 946.

Liability of water distributor for damage caused by water escaping from main, 20 A.L.R.3d 1294.

Water distributor's liability for injury due to condition of service lines, meters, and the like, which serve individual consumer, 20 A.L.R.3d 1363.

94 C.J.S. Waters § 248.

62-2-2. [Contents of articles of incorporation.]

Such articles shall set forth:

- A. the full names of the incorporators, and the corporate name of such company;
- B. the purpose or purposes for which such company is formed, and if the object be to construct reservoirs and canals, or ditches and pipelines for any of the purposes herein specified, the beginning point and terminus of the main line of such canals and ditches and pipelines, and the general course, direction and length thereof shall be stated;
- C. the amount of the capital stock and the number of shares as definitely as practicable;
- D. the term of existence of the company, which shall not exceed fifty years;
- E. the number of directors, and the names of those who shall manage the business of the company for the first year;
- F. the name of the city or town and county in which the principal place of business of the company is to be located.

History: Laws 1887, ch. 12, § 2; C.L. 1897, § 469; Code 1915, § 1027; C.S. 1929, § 32-407; 1941 Comp., § 72-202; 1953 Comp., § 68-2-2.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003,

Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-3. Filing of articles; certified copies.

A duly certified copy of the articles of incorporation executed by the secretary of state shall be filed in the office of the county clerk of each county through or into which any canal, ditch or pipeline may run or any reservoir may be established or in which the company may desire to transact business. Duly certified copies of the articles of incorporation shall be given by the secretary of state or county clerks, on the payment of the fees allowed by law, and shall be received as evidence in any of the courts of this state.

History: Laws 1887, ch. 12, § 3; C.L. 1897, § 470; Code 1915, § 1028; C.S. 1929, § 32-408; 1941 Comp., § 72-203; 1953 Comp., § 68-2-3; 2013, ch. 75, § 24.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as

amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2013 amendment, effective July 1, 2013, required that the secretary of state certify articles of incorporation; added the title of the section; in the first sentence, after "certified copy of the articles", added "of incorporation" and after "executed by", deleted "state corporation commission" and added "secretary of state"; and in the second sentence, after "copies of the articles", added "of incorporation" and after "shall be given by", deleted "said commission" and added "the secretary of state".

62-2-4. [General powers.]

When articles of incorporation shall have been executed, acknowledged and filed, as herein required, the persons therein named shall, with their associates and successors, be deemed a body politic and corporate, by the name stated in such articles, for and during the period named therein, and shall have power to sue and be sued, in any court; to adopt and use a common seal and alter the same at pleasure; to purchase, acquire, hold, sell, mortgage and convey such real and personal estate as such corporation may require to successfully carry on and transact the objects for which it was formed; to appoint such officers, agents and servants as the business of the corporation may require, and exact of them such security as may be thought proper, and remove them at will; except, no director shall be removed from office unless by a two-third vote of the whole number of directors; and to adopt bylaws, not inconsistent with the laws of this state for the organization of the company, the management of its business and property, the regulation of its affairs, the transfer of its stock and for carrying on all kinds of business within the objects and purposes of the corporation.

History: Laws 1887, ch. 12, § 4; C.L. 1897, § 471; Code 1915, § 1029; C.S. 1929, § 32-409; 1941 Comp., § 72-204; 1953 Comp., § 68-2-4.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224,

668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For power to borrow money, mortgage property and issue bonds, see 62-2-15 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters §§ 254 to 259.

62-2-5. [Additional powers.]

Corporations formed under this article for the purpose of furnishing and supplying water for any of the purposes mentioned in Section 62-2-1 NMSA 1978, shall have, in addition to the powers hereinbefore mentioned, rights as follows:

A. to cause such examinations and surveys for their proposed reservoirs, canals, pipelines and ditches to be made, as may be necessary to the selection of the most eligible locations and advantageous routes, and for such purpose, by their officers, agents and servants, to enter upon the lands or water of any person, or of this state;

B. to take and hold such voluntary grant of real estate and other property, as shall be made to them in furtherance of the purposes of such corporation;

C. to construct their canals, pipelines or ditches upon or along any stream of water;

D. to take and divert from any stream, lake or spring the surplus water, for the purpose of supplying the same to persons, to be used for the objects mentioned in Section 62-2-1 NMSA 1978, but such corporations shall have no right to interfere with the rights of, or appropriate the property of any persons except upon the payment of the assessed value thereof, to be ascertained as in this article provided; and provided, further, that no water shall be diverted, if it will

interfere with the reasonable requirements of any person or persons using or requiring the same, when so diverted;

E. to furnish water for the purposes mentioned in Section 62-2-1 NMSA 1978, at such rates as the bylaws may prescribe; but equal rates shall be conceded to each class of consumers;

F. to enter upon and condemn and appropriate any lands, timber, stone, gravel or other material that may be necessary for the uses and purposes of said companies.

History: Laws 1887, ch. 12, § 17; C.L. 1897, § 484; Code 1915, § 1042; C.S. 1929, § 32-422; 1941 Comp., § 72-205; 1953 Comp., § 68-2-5.

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For eminent domain proceedings, see 62-2-16 to 62-2-18 and Chapter 42A NMSA 1978.

For need for certificate of convenience and necessity before construction or operation of utility, see 62-9-1 NMSA 1978.

For excavation damage to underground utility lines and related facilities, see 62-14-1 to 62-14-8 NMSA 1978.

For appropriation of water, see 72-5-1 to 72-5-39 NMSA 1978.

ANNOTATIONS

Irrigation companies may go upon private lands to make a preliminary survey for right-of-way by eminent domain, to divert surplus water, unappropriated and subject to diversion, for this is a public purpose, and it is not necessary that the distributing company shall itself be a consumer, provided the water is used beneficially within a reasonable time. The burden of proving such facts is with the company. *Albuquerque Land & Irrigation Co. v. Gutierrez*, 1900-NMSC-017, 10 N.M. 177, 61 P. 357, *aff'd*, 188 U.S. 545, 23 S. Ct. 338, 47 L. Ed. 588 (1903).

Strangers may not raise question of interference with other appropriators. — The question whether the appropriation of water interferes with the rights of other appropriators cannot be raised by strangers not parties to the action. *Albuquerque Land & Irrigation Co. v. Gutierrez*, 1900-NMSC-017, 10 N.M. 177, 61 P. 357, *aff'd*, 188 U.S. 545, 23 S. Ct. 338, 47 L. Ed. 588 (1903).

Appropriator not limited to lands in original application. — An appropriator may use water for lands in addition to those specified in original application. 1909-12 Op. Att'y Gen. No. 19.

62-2-6. [Directors; qualifications; election.]

The corporate powers of any corporation formed under this article shall be exercised by a board of not less than three directors who shall be stockholders of the company, and a majority of them citizens of the United States, and at least one-third of whom shall be residents of this state. Such directors shall be elected annually, after the expiration of the term of the directors named in the articles of incorporation, at such time and place, and upon such notice, and in such mode as the bylaws of the company may provide; but all such elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he owns shares of stock, and the persons receiving the greatest number of votes shall be declared elected. When a vacancy occurs in the office of director by death, resignation or otherwise, such vacancy shall be filled for the remainder of the year in such manner as the bylaws shall prescribe. Should there be no election of directors, on the day fixed in the bylaws for such election, such election may be held at such other time as the bylaws may designate, and the directors in office may continue to act until their successors are elected.

History: Laws 1887, ch. 12, § 5; C.L. 1897, § 472; Code 1915, § 1030; C.S. 1929, § 32-410; 1941 Comp., § 72-206; 1953 Comp., § 68-2-6.

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by

Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-7. [Quorum in directors' meeting.]

A majority of the whole number of directors shall form a board for the transaction of business, and a decision of a majority of the directors assembled as a board shall be valid as a corporate act.

History: Laws 1887, ch. 12, § 6; C.L. 1897, § 473; Code 1915, § 1031; C.S. 1929, § 32-411; 1941 Comp., § 72-207; 1953 Comp., § 68-2-7.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003,

Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-8. [Meetings of directors.]

The first meeting of the board of directors shall be held at such time and place as may be agreed upon by a majority of the persons named as such in the articles of incorporation, and all subsequent meetings shall be at such times and places as the bylaws may designate.

History: Laws 1887, ch. 12, § 7; C.L. 1897, § 474; Code 1915, § 1032; C.S. 1929, § 32-412; 1941 Comp., § 72-208; 1953 Comp., § 68-2-8.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003,

Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-9. [Transfer of shares.]

The stock of the company shall be deemed personal estate, and shall be transferrable [transferable] in such manner as shall be prescribed by the bylaws of the company; but no transfer shall be valid except between the parties thereto, until the same shall be so entered on the books of the company as to show the names of the parties by and to whom transferred, the number and designation of the shares and the date of transfer.

History: Laws 1887, ch. 12, § 8; C.L. 1897, § 475; Code 1915, § 1033; C.S. 1929, § 32-413; 1941 Comp., § 72-209; 1953 Comp., § 68-2-9.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82,

as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For investment securities provisions of Uniform Commercial Code, *see* 55-8-101 to 55-8-511 NMSA 1978.

62-2-10. [Subscriptions to stock; payment; notice of assessment; sale of stock.]

The directors shall have power to call in and demand from the stockholders the sum by them subscribed, at such times and in such payments as they may deem proper; notice of such assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks, in some newspaper published at the place designated as the principal place of business of the corporation, or if none be published there, then by posting such notice for that period, in at least six of the most public places in the county in which said principal place of business of the corporation is located. If, after such notice has been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be

sold as will be necessary for the payment of the assessment on all shares held by him. The sale of said shares shall be made as prescribed in the bylaws of the company, but all such sales shall be made at public auction, to the highest bidder, after notice thereof shall have been given as in this section provided for notice to stockholders of assessments; and the person who will agree to pay the assessment due, together with the expense of advertising, and other costs of such sale, for the smallest number of whole shares, shall be deemed the highest bidder. A complete record shall be kept of all assessments and sales of stock.

History: Laws 1887, ch. 12, § 9; C.L. 1897, § 476; Code 1915, § 1034; C.S. 1929, § 32-414; 1941 Comp., § 72-210; 1953 Comp., § 68-2-10.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For legal newspapers, see 14-11-2 NMSA 1978.

ANNOTATIONS

Bylaw providing for notice by registered mail is insufficient. — Provision in bylaw of a water company for notice of assessment by registered mail is insufficient notice under this section. 1917-18 Op. Att'y Gen. No. 17-1939.

This section does not contemplate any surplus from sale, as the bid must be for the payment of the assessment and costs for the smallest number of shares. 1917-18 Op. Att'y Gen. No. 17-1939.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters §§ 234, 293.

62-2-11. [Increase or decrease of capital stock.]

The capital stock of any such corporation may be increased or diminished at any meeting of the stockholders, but may only be done by a two-thirds vote of all the shares of stock, but in no case shall the capital stock be reduced below the outstanding indebtedness and liabilities of the corporation.

History: Laws 1887, ch. 12, § 12; C.L. 1897, § 479; Code 1915, § 1037; C.S. 1929, § 32-417; 1941 Comp., § 72-212; 1953 Comp., § 68-2-12.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003,

Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-12. [Commencement of business within one year.]

If any corporation formed under this article shall not organize and commence the transaction of its business within one year from the time of filing its articles of incorporation, its corporate powers shall cease.

History: Laws 1887, ch. 12, § 13; C.L. 1897, § 480; Code 1915, § 1038; C.S. 1929, § 32-418; 1941 Comp., § 72-213; 1953 Comp., § 68-2-13.

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-13. [Voluntary dissolution.]

Any corporation formed under this article or formed under any general law of this state, the principal business of which has been the construction and maintenance of dams, reservoirs,

ditches and canals, and the distribution of water therethrough [there-through] for public use, may be disincorporated by a two-thirds vote of all the stockholders, and when such vote shall have been taken, notice thereof shall be given as required, by which notice shall state when and at what place application will be made to the district court or the judge thereof to have such corporation judicially declared dissolved, and at such time and place or at such other time and place to which said matter may be adjourned by the court or judge, such court or judge may hear evidence touching the matter, and if satisfied that all debts and liabilities [liabilities] of such corporation have been paid or that the same can be paid, settled, satisfied or compromised by the sale of the tangible assets of such corporation, and that the requisite vote in favor of dissolution has been duly given, such court or judge shall enter an order declaring the corporation dissolved, and thereafter the directors or trustees of such corporation shall sell and dispose of the tangible property thereof or such portion of the same as may be necessary to liquidate the indebtedness of the company, and apply the proceeds realized from such sale to the payment, satisfaction or compromise of the indebtedness of such corporation, the balance remaining to be distributed to the stockholders thereof in accordance with Section 62-2-14 NMSA 1978.

History: Laws 1887, ch. 12, § 14; C.L. 1897, § 481; Laws 1905, ch. 92, § 1; Code 1915, § 1039; C.S. 1929, § 32-419; 1941 Comp., § 72-214; 1953 Comp., § 68-2-14.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by

Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 93 C.J.S. Waters §§ 68, 69, 159; 94 C.J.S. Waters §§ 330, 332.

62-2-14. [Powers of directors after dissolution.]

Upon the dissolution of any corporation, the directors at the time of dissolution shall be directors and agents of the creditors and stockholders of the corporation dissolved, and shall have full power to sue for and recover the debts and property of the corporation, by the name of the directors of such corporation, collect and pay any outstanding debts, settle its affairs and divide amongst the stockholders the money and property remaining after the payment of all debts, liabilities [liabilities] and necessary expenses.

History: Laws 1887, ch. 12, § 15; C.L. 1897, § 482; Code 1915, § 1040; C.S. 1929, § 32-420; 1941 Comp., § 72-215; 1953 Comp., § 68-2-15.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by

Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-15. [Borrowing money; bonds; mortgages.]

Corporations formed under this article shall have power to borrow such sums of money as may be necessary for the construction, completion or operation of their reservoirs, canals and ditches, or pipelines, or the purchase of any lands, water rights or other property necessary, in order to carry out the objects for which they were incorporated; and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted for the purpose aforesaid.

History: Laws 1887, ch. 12, § 16; C.L. 1897, § 483; Code 1915, § 1041; C.S. 1929, § 32-421; Laws 1941, ch. 15, § 2; 1941 Comp., § 72-216; 1953 Comp., § 68-2-16.

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an

amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however; that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For general power to mortgage property, see 62-2-4 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Occupations, Trades and Professions §§ 70, 73, 91, 100, 123, 127.

93 C.J.S. Waters §§ 190, 218; 94 C.J.S. Waters §§ 259, 326.

62-2-16. Eminent domain.

Corporations formed pursuant to Sections 62-2-1 through 62-2-22 NMSA 1978 have the power of eminent domain for the purpose of carrying out the provisions of Sections 62-2-1 through 62-2-22 NMSA 1978, and in the manner provided by the Eminent Domain Code [42A-1-1 through 42A-1-33 NMSA 1978].

History: Laws 1981, ch. 125, § 50.

Repeals and reenactments. — Laws 1981, ch. 125, § 50, repealed former 62-2-16 NMSA 1978, relating to the power of eminent domain, and enacted a new section.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however; that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For eminent domain proceedings generally, see Chapter 42A NMSA 1978.

ANNOTATIONS

Right to condemn implies conveying water is "public use". — The legislature, in Section 72-1-5 NMSA

1978, has given to persons, firms, associations and corporations the right to condemn land right-of-way for the purpose of conveying water for beneficial uses. Since the power of eminent domain cannot be exercised without a "public use" being present, the legislature has impliedly declared such a "public use" to be present in such conveyance of water. *Kaiser Steel Corp. v. W.S. Ranch Co.*, 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986 (rendered under prior law).

Section grants power only to corporations organized under article. — The powers of this section are limited to corporations incorporated under Sections 62-2-1 through 62-2-22 NMSA 1978. 1967 Op. Att'y Gen. No. 67-50 (mutual domestic water or sewage works association has no power of eminent domain).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Eminent domain: unity or contiguity of separate properties sufficient to allow damages for diminished value of parcel remaining after taking of other parcel, 59 A.L.R.4th 308, 93 C.J.S. Waters § 88; 94 C.J.S. Waters §§ 228, 247, 255.

62-2-17. [Construction of works; eminent domain.]

Such corporations shall be authorized to construct such branch, lateral or side canals, pipelines or ditches, as may be necessary to successfully accomplish the objects and purposes for which they shall be organized, and shall have the same rights and powers as to the taking and appropriating of land and other property, to be used therefor, as is given and conferred by the next preceding section [62-2-16 NMSA 1978], or other sections of this article.

History: Laws 1887, ch. 12, § 19; C.L. 1897, § 486; Code 1915, § 1044; C.S. 1929, § 32-424; 1941 Comp., § 72-218; 1953 Comp., § 68-2-18.

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference

to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336,

Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Right to condemn implies conveyance of water is "public use". — The legislature, in Section 72-1-5 NMSA 1978, has given to persons, firms, associations and corporations, the right to condemn land right-of-way for the

purpose of conveying water for beneficial uses. Since the power of eminent domain cannot be exercised without a "public use" being present, the legislature has impliedly declared such a "public use" to be present in such conveyance of water. *Kaiser Steel Corp. v. W.S. Ranch Co.*, 1970-NMSC-043, 81 N.M. 414, 467 P.2d 986.

Section grants power only to corporations organized under article. — The powers of this section are limited to corporations incorporated under Sections 62-2-1 to 62-2-22 NMSA 1978. Mutual domestic water or sewage works association as organized under the Sanitary Projects Act of 1957 has no power of eminent domain. 1967 Op. Att'y Gen. No. 67-50.

62-2-18. Acquiring land of minors and incapacitated persons.

Should it become necessary for any such corporation to acquire the title to any land or other property belonging to any minor or incapacitated person, or which may belong to the estate of any deceased person, the title to any such property may be obtained in such manner as may be provided by law for the conveyance, sale or disposal of the land or other property belonging to minors or incapacitated persons or the estates of deceased persons.

History: Laws 1887, ch. 12, § 20; C.L. 1897, § 487; Code 1915, § 1045; C.S. 1929, § 32-425; 1941 Comp., § 72-219; 1953 Comp., § 68-2-19; Laws 1975, ch. 257, § 8-124.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is

ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For administration of decedent's estate, see 45-3-101 to 45-3-1302 NMSA 1978.

For protection of lands of minors or incapacitated persons, see 45-5-401 to 45-5-432 NMSA 1978.

62-2-19. [Use of materials on state lands.]

Corporations formed under this article for the purpose of furnishing or supplying water for any of the purposes mentioned in Section 62-2-1 NMSA 1978, shall have the right to use any timber, stone or other materials upon lands belonging to the state, and along the line of their canals or ditches, or in the vicinity of such reservoirs as may be necessary in the construction thereof.

History: Laws 1887, ch. 12, § 21; C.L. 1897, § 488; Code 1915, § 1046; C.S. 1929, § 32-426; 1941 Comp., § 72-220; 1953 Comp., § 68-2-20.

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5 and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Prior to the 1915 Code, this section contained the provision "shall have the right and privilege of constructing their reservoirs, canals, pipelines or ditches on or over any

of the lands now belonging to this territory, or which may hereafter become the property of the territory."

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-2-20. [Corporations for serving cities and towns; rights and privileges.]

All corporations which have been heretofore or may hereafter be formed under the laws of New Mexico for the purpose of supplying water for domestic, irrigating or manufacturing purposes, for

cities or towns, with a population of three thousand persons or more, shall have all the powers and shall be entitled to all the rights and privileges so far as they may be necessary for the transaction of the business of any and all such corporations as are conferred on railroad companies.

History: Laws 1884, ch. 41, § 1; C.L. 1884, § 231; C.L. 1897, § 467; Code 1915, § 1047; C.S. 1929, § 32-427; 1941 Comp., § 72-221; 1953 Comp., § 68-2-21.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For powers, rights and privileges of railroad companies, see 63-2-1 to 63-2-18 NMSA 1978.

ANNOTATIONS

Failure to use does not lose right to appropriated water. — Failure to use water rightfully appropriated does not cause a loss of such property right. 1914 Op. Att'y Gen. No. 14-1171.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Waterworks as public building, 19 A.L.R. 547.

Liability of water company to private owner for breach of its contract with municipality to supply pressure for fire purposes, 62 A.L.R. 1205.

Right to cut off water supply because of failure to pay sewer service charge, 26 A.L.R.2d 1359.

94 C.J.S. Waters § 254.

62-2-21. [Corporations for serving cities and towns; laying mains in streets; service.]

Corporations formed under this article for the purpose of supplying water to any city, town or the inhabitants thereof for any purpose, may lay their mains or pipes in, along and upon any of the public streets or alleys of such city or town, subject to such regulations as may be provided by the corporate authorities of such city or town; and may furnish and supply such city or town or the inhabitants thereof, with water, upon such conditons [conditions] and terms as may be fixed by such corporations, or as may be agreed to by the consumers and such corporations.

History: Laws 1887, ch. 12, § 24; C.L. 1897, § 491; Code 1915, § 1048; C.S. 1929, § 32-428; 1941 Comp., § 72-222; 1953 Comp., § 68-2-22.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The 1915 Code compilers substituted the words "this article" for "this act." They presumably refer to Code 1915, ch. 23, art. 3, the effective provisions of which are compiled as 62-1-1 to 62-1-5, and 62-2-1 to 62-2-22 NMSA 1978, while the original reference to "this act" meant Laws 1887, ch. 12, the effective provisions of which are compiled as 62-2-1 to 62-2-19, 62-2-21 and 62-2-22 NMSA 1978.

Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second

time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Franchise may be granted without referendum.

— A franchise to maintain and operate an existing water plant and to make betterments may be granted by ordinance by a city without a referendum. *Asplund v. City of Santa Fe*, 1926-NMSC-002, 31 N.M. 291, 244 P. 1067.

City is estopped to deny mutual agreements. — A private waterworks company having agreed to furnish water to a city for 25 years, and the city having agreed not to operate waterworks in or near the town for the same time, and to rent hydrants, is estopped to deny that it operates under the contract. *Bankers Trust Co. v. City of Raton*, 258 U.S. 328, 42 S. Ct. 340, 66 L. Ed. 642 (1922).

Municipality may require removal of system after franchise expires. — A municipality cannot be enjoined from requiring the removal from the streets of the system of a waterworks company whose franchise has expired. *Bankers Trust Co. v. City of Raton*, 258 U.S. 328, 42 S. Ct. 340, 66 L. Ed. 642 (1922).

62-2-22. [Irrigation companies; restrictions on use of water.]

That no incorporation of any company or companies to supply water for the purposes of irrigation and other purposes, shall have any right to divert the usual and natural flow of water of any stream which by Section 73-2-9 NMSA 1978 has been declared a public acequia for any use whatever, between the fifteenth day of February and the fifteenth day of October of each year, unless it be with the unanimous consent of all and every person holding agricultural and cultivated lands under such stream or public acequia, and to be irrigated by the water furnished by said stream or

public acequia, and that no incorporation of any company or companies shall interfere with the water rights of any individual or company, acquired prior to February 24, 1887.

History: Laws 1887, ch. 12, § 25; C.L. 1897, § 492; Code 1915, § 1049; C.S. 1929, § 32-429; 1941 Comp., § 72-223; 1953 Comp., § 68-2-23.

Compiler's notes. — Sections 62-2-1 to 62-2-22 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 2 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5

also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Irrigation §§ 44-55.

Discrimination between property within and that outside municipality or other governmental district as to rates, 4 A.L.R.2d 595.

94 C.J.S. Waters §§ 314 to 368.

ARTICLE 3

Public Utility Act; Preamble and Definitions

Sec.

62-3-1. Declaration of policy.

62-3-2. Objects and purposes; liberal interpretation; repeal of inconsistent statutory provisions.

62-3-2.1. Objects and purposes; liberal interpretation.

Sec.

62-3-3. Definitions.

62-3-4. Limitations and exceptions.

62-3-4.1. Certain persons not public utility.

62-3-5. Collection of fees by public utilities.

62-3-1. Declaration of policy.

A. Public utilities, as defined in Section 62-3-3 NMSA 1978, are affected with the public interest in that, among other things:

(1) a substantial portion of public utilities' business and activities involves the rendition of essential public services to a large number of the general public;

(2) public utilities' financing involves the investment of large sums of money, including capital obtained from many members of the general public; and

(3) the development and extension of public utilities' business directly affects the development, growth and expansion of the general welfare, business and industry of the state.

B. It is the declared policy of the state that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry.

History: 1953 Comp., § 68-3-1, enacted by Laws 1967, ch. 96, § 2; 2008, ch. 24, § 1.

Repeals and reenactments. — Laws 1967, ch. 96, § 2, repealed former 68-3-1, 1953 Comp., relating to declaration of policy, and enacted a new section.

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2008 amendment, effective May 14, 2008, in Subsection B, provided that capital and investment should provide for demand-side resources.

ANNOTATIONS

Telecommunications. — The Public Utilities Act does not apply to telecommunication services. *In re Qwest Communications Int'l, Inc.*, 2002-NMSC-006, 131 N.M. 770, 42 P.3d 1219.

Public regulation commission derives its authority and jurisdiction from the New Mexico Public Utility Act. *City of Sunland Park v. N.M. Pub. Regulation Comm'n.*, 2004-NMCA-024, 135 N.M. 143, 85 P.3d 267, cert. denied, 2004-NMCERT-002, 135 N.M. 169, 86 P.3d 47.

Goals of utility regulation have been established. — The legislature has established certain goals which utility regulation and supervision are intended to achieve:

reasonable and proper services should be made available to the public at fair, just and reasonable rates, and capital and investment should be encouraged and attracted for the plants and facilities which are to render that service. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Utilities excluded from commission's jurisdiction. — Absent a regulatory provision stating otherwise, or absent a willingness of the utility to serve "an indefinite public," any utilities not expressly brought within the scope of The Public Utility Act are excluded from the commission's jurisdiction. *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28.

Section lists some, but not all, points of public interest. — A preamble is a declaration by the legislature of the reasons for the passage of the statute and is helpful in the interpretation of any ambiguities within the statute to which it is prefixed; however, the points of public interest in this section are not the only ones contemplated by the legislature. *Griffith v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269.

Supervision of foreign public utilities. — Foreign public utilities authorized to do business in this state are subject to the same supervision as utilities incorporated under the laws of this state. *El Paso Elec. Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, 92 N.M. 581, 592 P.2d 181.

Public service commission's (now public regulation commission's) powers only come from statute. — The public service commission (now public regulation commission) is an administrative body created by statute and must therefore find its authority and jurisdiction conferred upon it either expressly or by necessary implication from the same statutory authority. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Commission may not distinguish between forms of ownership in rate-making. — The New Mexico legislature has made no distinction between public utilities operated as individuals, firms, partnerships, companies or corporations. Nowhere in the New Mexico Public Utility Act is the commission given authority for the purpose of rate-making, to make a distinction between a public utility operated as a corporation from one operated as a sole proprietorship. *Moyston v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-062, 76 N.M. 146, 412 P.2d 840.

Order that refund be passed on to consumers. — Public service commission (now public regulation commission) has no express or implied statutory authority to order the flow-through of refunds to electric company from power supplier to consumers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Where refund was not trust fund for consumers. — Where refund was ordered paid over to power company by the federal power commission without any restrictions, and there was nothing in the order indicating an intention on the part of the commission to create a "trust fund" for the benefit of the ultimate consumers, the refund did not constitute a trust fund belonging to company's customers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Charitable contributions and lobbying expenditures not passable to consumers. — A commission order which essentially prohibited utility companies from including charitable contributions and lobbying expenditures in their cost of service, and from thereby passing those expenses on to the ratepayers was a reasonable exercise of the commission's authority pursuant to Subsection B. *El Paso Elec. Co. v. N.M. Pub. Serv. Comm'n*, 1985-NMSC-085, 103 N.M. 300, 706 P.2d 511.

Advertising costs passable to consumers. — A commission order which allowed utility companies to include in their cost of service, and pass on to their ratepayers, expenditures for "informational" advertising (e.g., safety, billing practices, etc.), but not expenditures for "institutional" advertising (e.g., enhancement of corporate image), and which required that a utility show by "clear and convincing" evidence that an advertising expense is allowable was a reasonable exercise of the commission's authority pursuant to Subsection B, to insure that utility services are available "at fair, just and reasonable rates." *El Paso Elec. Co. v. N.M. Pub. Serv. Comm'n*, 1985-NMSC-085, 103 N.M. 300, 706 P.2d 511.

Rate increases to compensate predecessor utility for expenses. — The public service commission (now public regulation commission) did not have jurisdiction over rate increases requested by a natural gas distribution company to compensate the company's predecessor, which was not currently a public utility, for expenses incurred by the latter in fulfilling its function as a public utility. *Southern Union Gas Co. v. N.M. Pub. Util. Comm'n*, 1997-NMSC-056, 124 N.M. 176, 947 P.2d 133.

Lowering gas rate to reimburse for overpayment is subject to bankruptcy stay provisions. — Lowering of gas rate to reimburse customers for previous overpayments is not a rate setting function of the public service commission and, as such, was subject to bankruptcy stay provisions. *In re Jal Gas Co.*, 44 B.R. 91 (Bankr. D.N.M. 1984).

Financial affairs of public utilities are strictly regulated. — It is the public policy of the state to require strict regulation of the financial affairs of public utilities, to the end that they may be adequately financed and, among other things, render service at reasonable rates. *Hogue v. Superior Utils., Inc.*, 1949-NMSC-056, 53 N.M. 452, 210 P.2d 938 (1949).

Both ratepayers and investors must be justly treated. — In the determining of a proper rate of return under the statute, enough actual dollars must be produced that both ratepayers and investors are justly and reasonably treated. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Commission is vested with considerable discretion in determining whether a rate to be received and charged is just and reasonable. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Commission not limited in factors to be considered in setting rates. — Neither New Mexico case law nor the Public Utility Act imposes any one particular method of valuation upon the commission in ascertaining the rate base of a utility; nor does the spirit of the statute tie the commission down to the consideration of a single factor in establishing rates. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Commission must consider income taxes in fixing rates. — Rates which failed entirely to take federal and state income taxes to which unincorporated utility's operations had been subjected into account as operating expenses are unfair, unjust, unreasonable and discriminatory, and an amount equal to the tax the utility would pay, if incorporated, was a reasonable and realistic amount to be deducted from the utility's taxable income for rate-making purposes. *Moyston v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-062, 76 N.M. 146, 412 P.2d 840.

Evidence must show rate fixed is reasonable and will achieve goals. — District court's holding below that commission's order was unreasonable and unlawful because it did not simply turn the cost of capital percentage directly into a rate of return was upheld by supreme court because it found there was little or no evidence that the particular rate chosen by the commission would

achieve the statutory goals and therefore was unreasonable. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Valuation methods must be supported by substantial evidence. — Where gas company seeking rate increase proposed to trend the general plant account items by using a nationally recognized index, but the commission instead inserted its own method - to simply use the untrended original cost, although the witness who strongly supported this approach admitted that he did not know whether this would accurately establish the reproduction cost of the items, the court held the commission's order was unreasonable, being unsupported by substantial evidence. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Commission may not remove entire construction item because interest was included. — The district court erred in failing to hold unreasonable and unlawful the commission's removal of \$673,574 of construction work in progress from the company's rate base on the reasoning that it had included the interest on that amount, \$4904.62, when the object was to determine accurately the value of the company's property. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Utility cannot contract against its negligence in performing duties. — A public service corporation, or a public utility such as an electric company, cannot contract against its negligence in the regular course of its business or in performing one of its duties of public service or where a public duty is owed or where public interest is involved. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Requiring exhaustion of administrative remedies is constitutional. — The requirement of the Public Utility Act that a person first exhaust his administrative remedy, before resorting to the courts does not violate N.M. Const., art. VI, § 13, granting general jurisdiction to the district courts except as elsewhere limited in such constitution. *Smith v. Southern Union Gas Co.*, 1954-NMSC-033, 58 N.M. 197, 269 P.2d 745.

Procedure may not be changed arbitrarily. — Although the public service commission (now public regulation commission) should be able to change its procedure, it should not arbitrarily or capriciously do so without good reasons. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Motion to bring record of previous case before court properly stricken. — It was not error on the part of the district court to strike the commission's motion for an amended praecipe, where this motion would have had the effect of bringing the record of a previous case before the court, and the record of that case was not a part of the record in the instant case. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Indians on reservation are not subject to regulation. — Indians acquiring gas resources from sources wholly upon Indian reservations within the state of New Mexico are not public utilities subject to regulation by the public service commission (now public

regulation commission) of New Mexico. 1953-54 Op. Att'y Gen. No. 53-5690.

Indians operating a gas distribution system wholly on an Indian reservation regardless of the manner in which they acquire the gas on the reservation are not subject to the laws of the state of New Mexico in relation to regulation as public utilities. 1953-54 Op. Att'y Gen. No. 53-5690.

Selling television signals does not require certificate. — There does not exist any requirement that a business, consisting of sale of television transmission signals, obtain a certificate of convenience and necessity from either the public service commission (now public regulation commission) of New Mexico or the corporation commission (now public regulation commission) of New Mexico before commencing to do business. 1953-54 Op. Att'y Gen. No. 54-5942.

Individual selling water to municipal utility is regulated utility. — An individual operating a water service and selling at wholesale water to a municipally owned utility would be a public utility to the extent this operation effects the public interest and as such would be subject to the jurisdiction of the public service commission (now public regulation commission). 1953-54 Op. Att'y Gen. No. 53-5715.

General jurisdiction does not cover water and sanitation districts. — The legislature did not intend to place water and sanitation districts under the general jurisdiction of the public service commission (now public regulation commission). 1971 Op. Att'y Gen. No. 71-56.

Commission is given jurisdiction of water and sanitation district rates. — Water and sanitation districts have not been declared to be subject to the jurisdiction of the public service commission (now public regulation commission) except in the limited area of approving the district board's rates, tolls and charges. 1971 Op. Att'y Gen. No. 71-56.

Law reviews. — For article, "The Regulation of Public Utilities," see 10 Nat. Res. J. 827 (1970).

For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

For article, "State Regulation in a Deregulated Environment: A State-Level Regulator's Lament," see 27 Nat. Res. J. 799 (1988).

For 1984-88 survey of New Mexico administrative law, see 19 N.M.L. Rev. 575 (1990).

For note, "Administrative Law - The Constitutional Limits of the Power to Regulate: *Duquesne Light Co. v. Barasch*," see 20 N.M.L. Rev. 199 (1990).

For article, "Current Utility Regulatory Practice from a Historical Perspective," see 32 Nat. Res. J. 289 (1992).

62-3-2. Objects and purposes; liberal interpretation; repeal of inconsistent statutory provisions.

A. The following are the objects and purposes of this act.

(1) Experience has proven that electric service by rural electric cooperatives must be furnished under the regulation of the commission in order to effectuate the purposes of both the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978], as amended, and the Public

Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], as amended, and that without extending the coverage of the Public Utility Act, as amended, to rural electric cooperatives, the declared policy of the Public Utility Act, as amended, and the general welfare, business and industry of the state may be frustrated.

(2) It is the declared policy of the state that preservation of the public health, safety and welfare, the interest of consumers and the interest of investor-members require that the construction, development and extension of utility plants and facilities be without unnecessary duplication and economic waste. Experience has proven that this purpose cannot be accomplished without bringing the rural electric cooperatives and persons heretofore recognized as public utilities into parity of treatment with respect to the commission's independent jurisdiction and power to prevent unreasonable interference between proposed and existing plants, lines and systems.

(3) Experience has also proven that rural electric cooperatives are substantially different from investor-owned utilities, particularly relative to setting rates. Under the Rural Electric Cooperative Act, rural electric cooperatives are nonprofit membership corporations whose members have direct control over the cooperative's rates through an elected board of trustees. Generally, consumers of the cooperative's power are members. In contrast, consumers of power from investor-owned utilities have no control over the setting of rates by such utilities which are profit motivated. Experience has proven that the costs to rural electric cooperatives and the public at large in complete government regulation of their rates is greatly disproportionate to the need and benefits of complete rate regulation and interferes with the setting of fair, just and reasonable rates to all utilities. Experience has shown that a rational basis exists to provide procedures for setting rates of rural electric cooperatives different from and more limited than those for setting rates of investor-owned utilities. Without limiting government regulation of rate setting by rural electric cooperatives as provided by Section 62-8-7 NMSA 1978, the declared policy of the Public Utility Act, the provision of reasonable and proper utility services at fair, just and reasonable rates, and the general welfare, business and industry of the state may be frustrated.

(4) It is the intent of the legislature in enacting this statute to bring up to date the laws pertaining to public utilities and rural electric cooperatives so that the rural electric cooperative which is a public utility is subject to reasonable burdens and entitled to reasonable benefits which apply to public utilities generally, to insure more reasonable public regulation and supervision of public utilities, to facilitate the prevention of unnecessary duplication and economic waste between utility systems and to establish a system which will more adequately provide for the development and extension of reasonable and proper utility services at fair, just and reasonable rates. The accomplishment of this intent is necessary and vital to the preservation of the public health, safety and welfare.

B. This act shall be liberally construed to carry out its purposes.

C. Nothing contained in any other act governing the creation and operation of rural electric cooperatives which are public utilities, including Laws 1937, Chapter 100 and the Rural Electric Cooperative Act, as amended, shall be construed to conflict with any duty to which such a utility may be subject or with any benefit to which such a utility may be entitled under the Public Utility Act, as now or hereafter amended. In the event any provision of such other act, including Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, as now or hereafter amended, is held to be repugnant to any provision of the Public Utility Act, as now or hereafter amended, the latter shall be controlling and the former is repealed to the extent of the repugnancy.

History: 1953 Comp., § 68-3-1.1, enacted by Laws 1967, ch. 96, § 9; 1985, ch. 176, § 1.

Compiler's notes. — The term "this act", referred to in Subsections A and B, first appears in Laws 1985, ch. 176, which is codified at 62-3-2 and 62-8-7 NMSA 1978, but is probably intended to be a reference to the Public Utility Act.

Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an

amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For Public Utility Act repealing repugnant provisions of Rural Electric Cooperative Act, see 62-15-32 NMSA 1978.

The 1985 amendment deleted "hereby declared to be" following "The following are" and "1967" following "purposes of this" in the introductory paragraph of Subsection

A, deleted "public service" preceding "commission" near the beginning of Subsection A(1), substituted "this purpose" for "such purpose", "plants" for "plant" and "systems" for "system" in the second sentence of Subsection A(2), added present Subsection A(3), renumbered former Subsection A(3) as present Subsection A(4), substituting "which is a public utility is subject to reasonable burdens and entitled to reasonable benefits which apply to public utilities generally, to insure more reasonable public regulation" for "subject to all the burdens and entitled to all the benefits which apply to public utilities generally, to insure more rigid public regulation" in that subsection, deleted "1967" following "This" at the beginning of Subsection B, divided the former provisions of Subsection C into two sentences, substituting "operation of rural electric cooperatives which are public utilities" for "operation of public utilities brought under the regulation of the commission by virtue of this 1967 act" and deleting "and" following "hereafter amended" in the first sentence and substituting "is held to be" for "shall be held to be" and deleting "shall be, and" following "former" and "hereby" following "former is" in the second sentence of Subsection C.

ANNOTATIONS

Cooperatives may not be made utilities but excepted from regulations upon others. — Laws 1961, ch. 89 (repealed), insofar as it attempted to place rural electric cooperatives under the Public Utility Act by including them within the definition of "public utility" constituted an arbitrary and unreasonable classification in violation of the equal protection clauses because cooperatives were included in the act though not required to render service to the general public and no provision was

made for complete regulation of rates charged by them or securities issued by them, whereas other electric utilities had to render service to the public and their rates and financing were completely supervised and controlled. *Community Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-053, 76 N.M. 314, 414 P.2d 675, cert. denied, 385 U.S. 933, 87 S. Ct. 292, 17 L. Ed. 2d 213 (1966).

Formerly, rural electric cooperatives were not regulated by public utilities commission (now public regulation commission). *Socorro Elec. Coop. v. Public Serv. Co.*, 1959-NMSC-105, 66 N.M. 343, 348 P.2d 88.

Commission may not order that refund be passed on to consumers. — Public service commission (now public regulation commission) has no express or implied statutory authority to order the flow-through of refunds to electric company from power supplier to consumers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Where refund was not trust fund for consumers. — Where refund was ordered paid over to power company by the federal power commission without any restrictions, and there was nothing in the order indicating an intention on the part of the commission to create a "trust fund" for the benefit of the ultimate consumers, the refund did not constitute a trust fund belonging to company's customers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

It was the intent of the legislature that the Public Utility Act be liberally construed. 1969 Op. Att'y Gen. No. 69-81.

Law reviews. — For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

62-3-2.1. Objects and purposes; liberal interpretation.

A. The following are declared to be the objects and purposes of this 1985 act. Experience has proven that the costs to ratepayers of small water utilities with annual revenues of less than five hundred thousand dollars (\$500,000) and the public at large in complete government regulation of their rates is greatly disproportionate to the need and benefits of complete rate regulation and interferes with setting of fair, just and reasonable rates to all utilities. A rational basis exists to provide procedures for setting rates of such small water utilities different from and more limited than those for setting rates of other utilities. Without limiting government regulation of rate setting by small water utilities as provided by Section 62-8-7.1 NMSA 1978, the declared policy of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], as amended, the provision of reasonable and proper utility services at fair, just and reasonable rates, and the general welfare, business and industry of the state may be frustrated.

B. The following are hereby declared to be the objects and purposes of these 1987 amendments to the Public Utility Act. Because small sewer utilities are similar to small water utilities, the costs to ratepayers of small sewer utilities with annual revenues of less than five hundred thousand dollars (\$500,000) and the public at large in complete government regulation of their rates is greatly disproportionate to the need and benefits of complete rate regulation and interferes with setting of fair, just and reasonable rates to all utilities. A rational basis exists to provide procedures for setting rates of such small sewer utilities different from and more limited than those for setting rates of other utilities. Without limiting government regulation of rate setting by small sewer utilities as provided by Section 62-8-7.1 NMSA 1978, the declared policy of the Public Utility Act, the provision of reasonable and proper utility services at fair, just and reasonable rates, and the general welfare, business and industry of the state may be frustrated.

C. The following are declared to be the objects and purposes of this 1991 act. Experience has proven that the construction, development and extension of proper plants and facilities cannot be accomplished without unnecessary duplication and economic waste within areas certificated to water and sewer utilities without controls against duplicative intrusions into certificated areas by

municipal utilities. A rational basis exists to prohibit intrusion of municipal water or sewer facilities or service into areas in which a public utility furnishes regulated services until that municipality elects to come within the terms of the Public Utility Act, in which event both systems will be brought into parity of treatment with respect to the commission's independent jurisdiction and power to prevent unreasonable interference between competing plants, lines and systems. Without such controls as provided by Section 62-9-1.1 NMSA 1978, the declared policy of the Public Utility Act, the provision of reasonable and proper utility services at fair, just and reasonable rates and the general welfare, business and industry of the state may be frustrated.

D. The provisions of the 1985 and 1987 acts and of this 1991 act shall be liberally construed to carry out their purposes.

History: Laws 1985, ch. 221, § 1; 1987, ch. 52, § 1; 1991, ch. 143, § 1.

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

"This 1985 act", referred to in the first sentence of Subsection A, and "the 1985 . . . acts," referred to in Subsection D, refer to Laws 1985, ch. 221, which is presently compiled as 62-3-2.1, 62-8-7, and 62-8-7.1 NMSA 1978.

The terms "these 1987 amendments," referred to in the first sentence in Subsection B, and "1987 act," referred to in Subsection D, apparently mean Laws 1987, ch. 52, which appears as 62-3-2.1, 62-3-3, 62-8-7.1 and 62-9-2.1 NMSA 1978.

The term, "this 1991 act", referred to in Subsections C and D, refers to Laws 1991, ch. 143, which is presently compiled as 62-3-2.1 and 62-9-1.1 NMSA 1978.

The 1991 amendment, effective April 3, 1991, substituted "62-8-7.1 NMSA 1978" for "62-8-7 NMSA 1978, as amended" near the end of Subsection A and added Subsections C and D.

The 1987 amendment, effective June 19, 1987, added Subsection B and made a minor word change near the beginning of Subsection A.

ANNOTATIONS

An exception for small municipalities was not created. — Subsection C of Section 62-3-2.1 NMSA 1978 lacks the explicit language required to create an exception subjecting small municipalities to the Public Utility Act or to public regulation commission jurisdiction, prohibit municipal utilities from serving in areas covered by a public utility's certificate of convenience and necessity, or expand the scope of the Public Utility Act or the public regulation commission's jurisdiction over municipalities beyond the controls identified in Section 62-9-1.1 NMSA 1978. *Moon-gate Water Co., Inc. v. City of Las Cruces*, 2012-NMCA-003, 269 P.3d 1, cert. granted, 2012-NMCERT-001.

62-3-3. Definitions.

Unless otherwise specified, when used in the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978]:

A. "affiliated interest" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility. Control includes instances when:

- (1) a person is an officer, director, partner, trustee or person of similar status or function;
- (2) a person owns directly or indirectly or has a beneficial interest in ten percent or more of voting securities of a person;
- (3) a person has a level of ownership of securities other than voting securities that the commission establishes as creating a presumption of control; and
- (4) the possession of the power to direct or cause the direction of the management and policies of a person exists in fact, notwithstanding the lack of ownership of ten percent or more of the person's voting securities;

B. "commission" means the public regulation commission;

C. "commissioner" means a member of the commission;

D. "municipality" means a municipal corporation organized under the laws of the state, and H-class counties;

E. "person" means an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978], corporation or lessee, trustee or receiver appointed by any court. "Person" does not mean a class A county as described in Section 4-36-10 NMSA 1978 or a class B county as described in Section 4-36-8 NMSA 1978. "Person" does not mean a municipality as defined in this

section unless the municipality has elected to come within the terms of the Public Utility Act as provided in Section 62-6-5 NMSA 1978. In the absence of voluntary election by a municipality to come within the provisions of the Public Utility Act, the municipality shall be expressly excluded from the operation of that act and from the operation of all its provisions, and no such municipality shall for any purpose be considered a public utility;

F. "securities" means stock, stock certificates, bonds, notes, debentures, mortgages or deeds of trust or similar evidences of indebtedness issued, executed or assumed by a utility;

G. "public utility" or "utility" means every person not engaged solely in interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own, operate, lease or control:

(1) any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;

(2) any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas for light, heat or power or other uses; but "public utility" or "utility" shall not include any plant, property or facility used for or in connection with the business of the manufacture, storage, distribution, sale or furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by others than consumers who receive their supply through any pipeline system operating under municipal authority or franchise and distributing to the public;

(3) any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses; provided, however, that nothing contained in this paragraph shall be construed to apply to irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(4) any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses;

(5) any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses; provided that "public utility" or "utility" as used in the Public Utility Act does not include any utility owned or operated by a class A county as described in Section 4-36-10 NMSA 1978 either directly or through a corporation owned by or under contract with such a county; or

(6) any plant, property or facility for the sale or furnishing to or for the public of goods or services to reduce the consumption of or demand for electricity or natural gas, and is either a public utility under the definitions found in Paragraph (1) or (2) of this subsection, or is an alternative energy efficiency provider as described in Section 62-17-7 NMSA 1978;

H. "rate" means every rate, tariff, charge or other compensation for utility service rendered or to be rendered by a utility and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof;

I. "renewable energy" means electrical energy generated by means of a low- or zero-emission generation technology that has substantial long-term production potential and may include, without limitation, the following energy sources: solar, wind, hydropower, geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled. "Renewable energy" does not include fossil fuel or nuclear energy;

J. "service" or "service regulation" means every rule, regulation, practice, act or requirement relating to the service or facility of a utility;

K. "Class I transaction" means the sale, lease or provision of real property, water rights or other goods or services by an affiliated interest to a public utility with which it is affiliated or by a public utility to its affiliated interest;

L. "Class II transaction" means:

(1) the formation after May 19, 1982 of a corporate subsidiary by a public utility or a public utility holding company by a public utility or its affiliated interest;

(2) the direct acquisition of the voting securities or other direct ownership interests of a person by a public utility if such acquisition would make the utility the owner of ten percent or more of the voting securities or other direct ownership interests of that person;

(3) the agreement by a public utility to purchase securities or other ownership interest of a person other than a nonprofit corporation, contribute additional equity to, acquire additional equity interest in or pay or guarantee any bonds, notes, debentures, deeds of trust or other evidence of indebtedness of any such person; provided, however, that a public utility may honor all agreements entered into by such utility prior to May 19, 1982; or

(4) the divestiture by a public utility of any affiliated interest that is a corporate subsidiary of the public utility;

M. "corporate subsidiary" means any person ten percent or more of whose voting securities or other ownership interests are directly owned by a public utility;

N. "public utility holding company" means an affiliated interest that controls a public utility through the direct or indirect ownership of voting securities of that public utility;

O. "voting securities" means securities that carry the present right to vote for the election of directors or other members of the governing body ultimately responsible for the management of the organization; and

P. "future test period" means a twelve-month period beginning no later than the date a proposed rate change is expected to take effect.

History: 1953 Comp., § 68-3-2, enacted by Laws 1967, ch. 96, § 3; 1980, ch. 85, § 1; 1982, ch. 109, § 7; 1987, ch. 52, § 2; 1993, ch. 282, § 21; 1993, ch. 308, § 3; 1993, ch. 351, § 2; 1996, ch. 83, § 3; 1998, ch. 108, § 45; 2003, ch. 336, § 6; 2005, ch. 339, § 2; 2005, ch. 341, § 12; 2009, ch. 113, § 1.

Repeals and reenactments. — Laws 1967, ch. 96, § 3, repealed former 68-3-2, 1953 Comp., relating to definitions for the Public Utility Act, and enacted a new 62-3-3 NMSA 1978.

Cross references. — For Public Utility Act repealing repugnant provisions of Rural Electric Cooperative Act, see 62-3-2 C and 62-15-32 NMSA 1978.

For definition of terms "public utility" or "utility", see 62-3-3 NMSA 1978.

For the Efficient Use of Energy Act, see Chapter 62, Article 17 NMSA 1978 et seq.

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Laws 1937, Chapter 100, referred to in the first sentence in Subsection E, was repealed in 1939.

The 2009 amendment, effective June 19, 2009, added Subsection P.

The 2005 amendment, effective April 7, 2005, added Subsection G(6) to provide that public utility includes a plant, property or facilities for the sale or furnishing of goods or services to reduce the consumption or demand for utilities and is a public utility or an alternative emergency efficiency provider.

The 2003 amendment, effective June 20, 2003, inserted present Subsection I and renumbered subsequent subsections accordingly.

The 1998 amendment, effective January 1, 1999, deleted "Words and Phrases" in the section heading; substituted "public regulation" for "New Mexico public utility" in Subsection B; in Subsection C, substituted "commissioner" for "commissioners" near the beginning and deleted "any" preceding "a member of" near the end; substituted "a" for "any" near the beginning of Subsection D; in Subsection

E, substituted "an individual, firm, partnership, company" for "individuals, firms, partnerships, companies" near the beginning, substituted "cooperative" for "cooperatives" near the middle of Subsection E, substituted "corporation or lessee, trustee or receiver" for "as amended, corporations and lessees, trustees or receivers" near the middle, and substituted "'Person' does" for "It shall" in two places in Subsection E; near the end of Subsection G, deleted "now does or hereafter"; and made minor stylistic changes throughout the section.

The 1996 amendment, effective March 6, 1996, substituted "utility" for "service" in Subsection B; inserted "class A counties as described in Section 4-36-10 NMSA 1978" in Subsection D; added the proviso at the end of Paragraph (5) in Subsection G; and made stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, rewrote Subsection A and made stylistic changes in Subsection M.

The 1987 amendment, effective June 19, 1987, in Subsection G, substituted "stated in Section 62-3-4 and 62-3-4.1 NMSA 1978" for "hereinafter stated" in the opening clause and added Paragraph (5) and made minor language changes throughout the section.

ANNOTATIONS

Franchise fees are not rates. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not rates as defined in Section 62-3-3 NMSA 1978 and do not fall within the jurisdiction of the public regulation commission. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Franchise fees are not taxes. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not taxes that the public regulation commission may consider when setting rates. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Franchise fees are not items included in adjustment clauses. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not within the jurisdiction of the public regulation commission by analogy to fuel and purchased power adjustment clauses, over which the commission has jurisdiction under Section 62-8-7 NMSA 1978. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Line item charge for franchise fees. — The public regulation commission did not have jurisdiction to enter an order requiring a public utility to stop including

on customer's bills the franchise fee charges paid by the utility to a county for the right to use county right-of-way to deliver utility service to county residents and businesses. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

United States and governmental agencies are not "persons". — The legislature, under this section, did not see fit to include or even mention the United States or governmental agencies as "persons." *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1971-NMSC-035, 82 N.M. 405, 482 P.2d 913, *overruled on another point by De Vargas Sav. & Loan Ass'n v. Campbell*, 1975-NMSC-026, 87 N.M. 469, 535 P.2d 1320.

The words "person or corporation" do not in their ordinary signification mean a sovereign government. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1971-NMSC-035, 82 N.M. 405, 482 P.2d 913, *overruled on another point by De Vargas Sav. & Loan Ass'n v. Campbell*, 1975-NMSC-026, 87 N.M. 469, 535 P.2d 1320.

Public Service Company of New Mexico. — Although considered a "public utility" under this section, the Public Service Company of New Mexico (PNM) is essentially a private corporation, not a public governmental agency, and its works are not to be considered as "public works" projects. *Cnty. of Santa Fe v. Pub. Serv. Co.*, 311 F.3d 1031 (10th Cir. 2002).

Readiness to serve public is principal characteristic of public utility. — The principal determinative characteristic of a public utility is that of service to, or readiness to serve, an indefinite public (or portion of the public as such) which has a legal right to demand and receive its services or commodities. *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

In determining a public utility question, the test is whether or not a person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it. *Griffith v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269.

The public or private character of the enterprise does not depend on the number of persons by whom it is used, but on whether or not it is open to the use and service of all members of the public who may require it, to the extent of its capacity. *Griffith v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269; *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

Sufficient part to clothe operation with public interest. — The phrase "to the public" means sufficient sales to the public to clothe the operation with a public interest and does not mean willingness to sell to each and every one of the public without discrimination. *Griffith v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269.

Class II transaction not found. — Electric utility's investment in building non-utility facilities for paper company in exchange for the company's promise to reimburse the utility over time through charges for steam and water service was not a purchase of a "security" under Subsection K(3) (now Subsection L(3)), and therefore did not constitute a Class II transaction, so as to require prior commission approval. *Plains Elec. Generation & Transmission Coop. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-038, 126 N.M. 152, 967 P.2d 827.

Corporation not serving public is not public utility. — Where corporation had not held nor was holding itself as ready, willing and able to provide natural gas service to or for the public or any segment thereof, it could not be considered a public utility. *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

Water association in control of developer of subdivision is public utility, as the character of the use is to serve all members of the public who buy lots from the

developer, and the extent of the use is that an entire housing development is dependent upon the association for a prime necessity of life. *Griffith v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269.

Formerly, cooperatives did not come within definition of "public utility". *Socorro Elec. Coop. v. Pub. Serv. Co.*, 1959-NMSC-105, 66 N.M. 343, 348 P.2d 88.

Public service (now public regulation) commission was not required to delineate an electric cooperative's service area where part of its system was in an area previously certificated to another utility. *Lea Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1965-NMSC-057, 75 N.M. 191, 402 P.2d 377, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433 (1966).

Cooperatives may not be made utilities but excepted from regulations upon others. — Laws 1961, ch. 89 (repealed), insofar as it attempted to place rural electric cooperatives under the Public Utility Act by including them within the definition of "public utility" constituted an arbitrary and unreasonable classification in violation of the equal protection clauses because cooperatives were included in the act though not required to render service to the general public and no provision was made for complete regulation of rates charged by them or securities issued by them, whereas other electric utilities had to render service to the public and their rates and financing were completely supervised and controlled. *Community Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-053, 76 N.M. 314, 414 P.2d 675, cert. denied, 385 U.S. 933, 87 S. Ct. 292, 17 L. Ed. 2d 213.

No distinction made between utilities based on form of ownership. — The New Mexico legislature has made no distinction between public utilities operated as individuals, firms, partnerships, companies or corporations. Nowhere in the New Mexico Public Utility Act is the commission given authority, for the purpose of rate-making, to make a distinction between a public utility operated as a corporation from one operated as a sole proprietorship. *Moyston v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-062, 76 N.M. 146, 412 P.2d 840.

Municipality not an "interested electric utility." — The definition of "person" in Subsection E of this section controls the meaning of "interested electric utility" in Section 62-6-25B NMSA 1978 and, thus, a municipality that had not elected to come within the terms of the Public Utility Act was not authorized to seek wheeling orders from the commission. *Pub. Serv. Co. v. N.M. Pub. Util. Comm'n*, 1999-NMSC-040, 128 N.M. 309, 992 P.2d 860.

Regulation of "optional utility programs." — Commission had jurisdiction to require utility to establish a corporate subsidiary for purposes of instituting gas and electric "optional utility programs," which included surge suppression, maintenance and repair services, information services, and power quality solutions. *PNM Elec. Servs. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-017, 125 N.M. 302, 961 P.2d 147.

Unregulated municipalities must comply with liquefied petroleum gas statutes. — Inasmuch as municipally operated and owned utilities are not subject to regulation by the public service commission (now public regulation commission) (unless they so elect), a village is required to comply with provisions relating to liquefied petroleum gas. 1947-48 Op. Att'y Gen. No. 48-5156.

Obligation of state agency. — A state agency, like any other user of utility service, has the statutory obligation to pay the rates therefor, including any late charges, under schedules approved by the commission, since late charges fall within the definition of "rate" in this section. 1988 Op. Att'y Gen. No. 88-80.

Extent of undertaking limits obligation to serve. — One who undertakes to serve the public undertakes an obligation which is limited by the extent of his profession, and he cannot be compelled to serve beyond the limits

of that profession. Gas utility not required to serve city constructing line to utility's line. 1957-58 Op. Att'y Gen. No. 57-277.

Corporation may subject itself to regulation by selling electricity for resale to public. — When one utility sells electrical energy to another utility only, and not to the public, it is not subject to the provisions of this section, but notwithstanding the fact that by such operation it does not become a public utility, it subjects itself to regulation by the public service commission (now public regulation commission) when sale of the electricity is for resale to the public, to the extent necessary to determine that the cost to the utility shall be reasonable. 1951-52 Op. Att'y Gen. No. 52-5618.

Corporation may subject itself to regulation by selling water to municipal utility. — An individual operating a water service and selling at wholesale to a municipally-owned utility would be a public utility to the extent his operation affects the public interest and as such is subject to the jurisdiction of the public service

commission (now public regulation commission). 1953-54 Op. Att'y Gen. No. 53-5715.

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M. L. Rev. 287 (1979).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

For 1984-88 survey of New Mexico administrative law, see 19 N.M. L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 1, 2, 82.

Irrigation company as a public utility, 8 A.L.R. 268, 15 A.L.R. 1227.

Conclusiveness of charter, as regards character of corporation as a public utility corporation, 119 A.L.R. 1019.

Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority, 85 A.L.R. 4th 894.

73B C.J.S. Public Utilities §§ 2, 3, 15.

62-3-4. Limitations and exceptions.

A. The term "public utility" or "utility", when used in the Public Utility Act, shall not include:

(1) any person not otherwise a public utility who furnishes the service or commodity only to that person or that person's employees or tenants, when such service or commodity is not resold to or used by others, or who engages in the retail distribution of natural gas or electricity for vehicular fuel; or

(2) a corporation engaged in the business of operating a railroad and that does not primarily engage in the business of selling the service or commodity but that only incidentally to its railroad business or occasionally furnishes the service or commodity to another under a separate limited or revocable agreement or sells to a utility or municipality for resale, or that sells the service or commodity to another railroad, the state or federal government or a governmental agency, or that sells or gives for a consideration under revocable agreements or permits quantities of water out of any surplus of water supply acquired and held by it primarily for railroad purposes; and such railroad corporation shall not be subject to any of the provisions of the Public Utility Act.

B. The business of any public utility other than of the character defined in Subsection G of Section 62-3-3 NMSA 1978 is not subject to provisions of the Public Utility Act.

History: 1953 Comp., § 68-3-3, enacted by Laws 1967, ch. 96, § 4; 1992, ch. 58, § 9; 1998, ch. 108, § 46; 2019, ch. 196, § 2.

Repeals and reenactments. — Laws 1967, ch. 96, § 4, repealed former 68-3-3, 1953 Comp., relating to limitations on and exceptions from definition of "public utility," and enacted the above section.

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2019 amendment, effective June 14, 2019, provided that a person who engages in the retail distribution of electricity for vehicular fuel is not a public utility; in Subsection A, in Paragraph A(1), after "only to", deleted "himself, his" and added "that person or that person's", and after "natural gas", added "or electricity".

The 1998 amendment, effective January 1, 1999, added new Subsection A, redesignated former Subsection A as Paragraph A(1), and deleted "as amended" following "shall not include:" near the middle of the Subsection; redesignated former Subsection B as Paragraph A(2), and in that Paragraph, deleted "as amended. Nothing contained in that act shall be construed as giving to the commission any powers or jurisdiction over public utilities covered by Section 7 of Article 11 of the constitution of New Mexico" from the end; and added new Subsection B.

The 1992 amendment, effective May 20, 1992, added the subsection designations; added "or who engages in the retail distribution of natural gas for vehicular fuel" at the end of Subsection A; substituted "Subsection G of Section 62-3-3 NMSA 1978" for "Subdivision F of Section 68-3-2 New Mexico Statutes Annotated, 1953 Compilation hereof" in the first sentence of the second paragraph of Subsection B; and made minor stylistic changes throughout the section.

ANNOTATIONS

Supplier of water to public is public utility. — In order to preserve the public welfare, any person not engaged solely in interstate business, who operates a facility which supplies water to the public for domestic use, is a public utility unless he supplies water only to himself,

his tenants or his employees. *Griffith v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113, 520 P.2d 269.

Railroad furnishing water to town is not regulated by commission. — Public service commission (now public regulation commission) lacks jurisdiction in case in which a railroad which has been furnishing water

service to an unincorporated town for years proposes to discontinue the same. 1947-48 Op. Att'y Gen. No. 47-5054.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority, 85 A.L.R.4th 894.

62-3-4.1. Certain persons not public utility.

A. Notwithstanding anything in the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] to the contrary, no person not otherwise a public utility shall be deemed to be a public utility subject to the jurisdiction, control or regulation of the commission and the provisions of the Public Utility Act solely because such person owns or controls all or any part of any plant, property or facility described in Paragraph (1) of Subsection G of Section 62-3-3 NMSA 1978:

- (1) which is leased or held for lease or sale to any public utility or other lessee; or
- (2) the operation and use of which is vested by lease or other contract in a public utility or other lessee; or
- (3) for a period of not more than ninety days after termination of any lease or contract described in Paragraph (1) or (2) of this subsection or after such person gains possession of such property following a breach of such lease or contract.

B. The commission may upon application by a public utility issue its order approving the terms of any lease or contract described in Paragraph (1) or (2) of Subsection A of this section for the purpose of qualifying any party thereto for an exemption by the United States securities and exchange commission from the federal Public Utility Holding Company Act of 1935, as amended (Chapter 2C of Title 15 of the United States Code).

C. A public utility leasing all or any part of any plant, property or facility described in Paragraph (1) of Subsection G of Section 62-3-3 NMSA 1978 which is subject to any lease or contract described in this section shall comply with Section 62-9-1 NMSA 1978 with respect to such plant, property or facility.

D. Nothing in this section shall alter or modify the authority of the commission to regulate the rates and services of a person that is a public utility subject to the provisions of the Public Utility Act.

History: Laws 1981, ch. 345, § 1.

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5

also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority, 85 A.L.R.4th 894.

62-3-5. Collection of fees by public utilities.

Any public utility that owns or operates a public water supply system upon whom a fee is imposed pursuant to Section 74-1-7 or 74-1-8 NMSA 1978 shall be entitled immediately to collect the fee from its ratepayers, without a request for a change in rates. The utility shall notify the New Mexico public utility commission in writing of the imposition of the fee and, if practicable, shall show the fee as a separate line item on its bill.

History: Laws 1989, ch. 223, § 5; 1993, ch. 282, § 22.

Compiler's notes. — Sections 62-3-1 to 62-3-5 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 3 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003,

Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of

no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, substituted "New Mexico public utility commission" for "New Mexico public service commission" in the second sentence.

ARTICLE 3A

Electric Utility Industry Restructuring Act of 1999

(Repealed by Laws 2003, ch. 336, § 9.)

62-3A-1 to 62-3A-23. Repealed.

Repeals. — Laws 2003, ch. 336, § 9, repealed 62-3A-1 through 62-3A-23 NMSA 1978, the Electric Utility Industry Restructuring Act of 1999, as enacted by Laws 1999, ch. 294, §§ 1 to 22 and Laws 2000, ch. 88, § 1, and as

amended by Laws 2001, ch. 5, §§ 1 to 10, effective June 20, 2003. For provisions of the former sections, see the 2002 NMSA 1978 on *NMOneSource.com*.

ARTICLE 4

Joint Hearings and Orders

Sec.

62-4-1. Joint hearings and orders.

62-4-1. Joint hearings and orders.

The commission, in the discharge of its duties under the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], may make joint investigations, hold joint hearings within or without the state and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state, the United States or any New Mexico Indian nation, tribe or pueblo. In the holding of such investigations or hearings or in the making of such order, the commission may function under agreements or compacts between states to regulate interstate commerce. The commission, in the discharge of its duties under the Public Utility Act, may also negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of congress, for cooperative efforts in certificating the construction, operation and maintenance of major utility facilities in accord with the purposes of the Public Utility Act and for the enforcement of the respective state laws regarding same.

History: 1953 Comp., § 68-8-2.1, enacted by Laws 1977, ch. 191, § 1; 1993, ch. 282, § 44; 1998, ch. 108, § 47.

Compiler's notes. — Section 62-4-1 of the Public Utility Act is still effective as the repeal of Chapter 62, Article 4 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as

the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1998 amendment, effective January 1, 1999, deleted "public utility" following "The" at the beginning of the section; substituted "may" for "is authorized to" near the beginning of the section; substituted "or any New Mexico Indian nation, tribe or pueblo" for "whether" near the middle of the section; substituted "may also" for "is further authorized to" near the end of the section.

The 1993 amendment, effective June 18, 1993, substituted "public utility commission" for "public service commission" in the first sentence.

ARTICLE 5

New Mexico Public Utility Commission

(Repealed by Laws 1998, ch. 108, § 81.)

62-5-1 to 62-5-11. Repealed.

Repeals. — Laws 1998, ch. 108, § 81 repealed 62-5-1 to 62-5-11 NMSA 1978, as enacted by Laws 1941, ch. 84, §§ 7, 11, and 13 and as amended by Laws 1977, ch. 247, § 179, Laws 1979, ch. 261, § 1, and Laws 1993, ch. 282, §§

23, 24, 25, 26, 27, and 45, relating to the operation of the public utility commission, effective January 1, 1999. For provisions of former sections, see the 1997 NMSA 1978 on *NMOneSource.com*.

ARTICLE 6

Powers and Duties of Commission

Sec.

62-6-1 to 62-6-3. Repealed.
 62-6-4. Supervision and regulation of utilities.
 62-6-4.1. Contract carriage.
 62-6-4.2. Transition cost recovery.
 62-6-4.3. Public utilities; generating plant investment, construction, acquisition and operation.
 62-6-4.4. Gas and electric utilities; combined service.
 62-6-4.5. Billing; franchise fees; gross receipts taxes.
 62-6-5. Local option.
 62-6-6. Issuance, assumption or guarantee of securities.
 62-6-7. Application to commission; order of commission.
 62-6-8. Exempted securities.
 62-6-8.1. Additional jurisdiction.
 62-6-9. Applications disposed of promptly.
 62-6-10. No obligation on state.
 62-6-11. Securities voidable unless approved.
 62-6-12. Acquisitions, consolidations, etc.; consent of commission.
 62-6-13. Application; approval of commission.
 62-6-14. Valuation by the commission.
 62-6-15. Contract rate with the municipality and utilities; how established.

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62-6-16. Commission may prescribe uniform accounts.
 62-6-17. Office, books and records; sanction; penalty.
 62-6-18. Utilities required to report to commission.
 62-6-19. Standard of service.
 62-6-20. Meter accuracy.
 62-6-21. Inspection of meters and other devices for measuring public utility service.
 62-6-22. Meters and other measuring devices; testing; fees.
 62-6-23. Authority to enter premises.
 62-6-24. Safety rules and regulations.
 62-6-25. Electrical power grids reports; transmission of electrical power; complaint procedures.
 62-6-26. Economic development rates for gas and electric utilities; authorization.
 62-6-26.1. Rates for clean fuels used as vehicular fuels; authorization.
 62-6-27. Repealed.
 62-6-28. Clean energy investments; authorization; department of environment certification.

62-6-1 to 62-6-3. Repealed.

Repeals. — Laws 1998, ch. 108, § 81 repealed 62-6-1 to 62-6-3 NMSA 1978, as enacted by Laws 1941, ch. 84, §§ 14-16, relating to adoption of rules, reports to governor, and commissioners and employees rendering service to

public utilities, effective January 1, 1999. For provisions of former sections, see the 1997 NMSA 1978 on *NMOneSource.com*.

62-6-4. Supervision and regulation of utilities.

A. The commission shall have general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations and in respect to its securities, all in accordance with the provisions and subject to the reservations of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], and to do all things necessary and convenient in the exercise of its power and jurisdiction. Nothing in this section, however, shall be deemed to confer upon the commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipal corporation either directly or through a municipally owned corporation or owned and operated by any H class county, by a class B county as defined in Section 4-36-8 NMSA 1978 or by a class A county as described by

Section 4-36-10 NMSA 1978 either directly or through a corporation owned by or under contract with an H class county, by a class B county as defined in Section 4-36-8 NMSA 1978 or by a class A county as described by Section 4-36-10 NMSA 1978 or the rates, service, securities or class I or class II transactions of a generation and transmission cooperative. No inspection or supervision fees shall be paid by generation and transmission cooperatives, or by such municipalities or municipally owned corporations, a class B county as defined in Section 4-36-8 NMSA 1978, a class A county as described by Section 4-36-10 NMSA 1978 or H class counties or such corporation owned by or under contract with a class B county as defined in Section 4-36-8 NMSA 1978, a class A county as described by Section 4-36-10 NMSA 1978 or an H class county with respect to operations conducted in a class B county as defined in Section 4-36-8 NMSA 1978, in a class A county as described by Section 4-36-10 NMSA 1978 or in H class counties.

B. The sale, furnishing or delivery of gas, water or electricity by any person to a utility for resale to or for the public shall be subject to regulation by the commission but only to the extent necessary to enable the commission to determine that the cost to the utility of the gas, water or electricity at the place where the major distribution to the public begins is reasonable and that the methods of delivery of the gas, water or electricity are adequate; provided, however, that nothing in this subsection shall be construed to permit regulation by the commission with respect to a generation and transmission cooperative, except location control pursuant to Section 62-9-3 NMSA 1978 and limited rate regulation to the extent provided in Subsection D of this section, or of production or sale price at the wellhead of gas or petroleum.

C. The sale, furnishing or delivery of coal, uranium or other fuels by any affiliated interest to a utility for the generation of electricity for the public shall be subject to regulation by the commission but only to the extent necessary to enable the commission to determine that the cost to the utility of the coal, uranium or other fuels at the point of sale is reasonable and that the methods of delivery of the electricity are adequate; provided, however, that nothing in this subsection shall be construed to permit regulation by the commission of production or sale price at the wellhead of gas or petroleum. Nothing in this section shall be construed to permit regulation by the commission of production or sale price at the point of production of coal, uranium or other fuels.

D. New Mexico rates proposed by a generation and transmission cooperative shall be filed with the commission in the form of an advice notice, a copy of which shall be simultaneously served on all member utilities. Any member utility may file a protest of the proposed rates no later than twenty days after the generation and transmission cooperative files the advice notice. If three or more New Mexico member utilities file protests and the commission determines there is just cause in at least three of the protests for reviewing the proposed rates, the commission shall suspend the rates, conduct a hearing concerning reasonableness of the proposed rates and establish reasonable rates. Each protest must contain a clear and concise statement of the specific grounds upon which the protestant believes the proposed rates are unreasonable or otherwise unlawful; a brief description of the protestant's efforts to resolve its objections directly with the generation and transmission cooperative; a clear and concise statement of the relief the protestant seeks from the commission; and a formal resolution of the board of trustees of the protesting member utility authorizing the filing of the protest. In order to determine whether just cause may exist for review, the commission shall consider whether each protestant has exhausted remedies with the generation and transmission cooperative or whether the generation and transmission cooperative has unreasonably rejected the protestant's objections to the proposed rates. A member utility shall present its objections to the generation and transmission cooperative in writing and allow a reasonable period for the generation and transmission cooperative to attempt resolution of, or otherwise respond to, those objections. A period of seven days after receipt of written objections will be deemed reasonable for the generation and transmission cooperative to provide a written response to the member utility, but a written response is not required if such time period extends beyond twenty days after the date on which the generation and transmission cooperative filed the advice notice. The generation and transmission cooperative and its members are expected to make a good faith effort to resolve the member utility's objections to the proposed rates during that period of time.

E. As used in this section, "generation and transmission cooperative" means a person with generation or transmission facilities either organized as a rural electric cooperative pursuant to Laws

1937, Chapter 100 or the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978] or organized in another state and providing sales of electric power to member cooperatives in this state.

History: Laws 1941, ch. 84, § 17; 1941 Comp., § 72-504; 1953 Comp., § 68-5-4; Laws 1963, ch. 55, § 1; 1977, ch. 73, § 1; 1980, ch. 85, § 2; 1993, ch. 308, § 4; 1996, ch. 83, § 4; 2000, ch. 85, § 1; 2003, ch. 277, § 1.

Compiler's notes. — Sections 62-6-4 to 62-6-26, 1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For regulation of foreign municipal corporations distributing electricity in state, see 62-1-6 NMSA 1978.

For option of municipal corporations and class H counties to be regulated, see 62-3-3E and 62-6-5 NMSA 1978.

For service regulations, see 62-6-19 NMSA 1978.

For meter regulations, see 62-6-20 to 62-6-22 NMSA 1978.

For safety regulations, see 62-6-24 NMSA 1978.

For municipal utilities generally, see 3-23-1 to 3-23-10, 3-24-1 to 3-24-10, 3-25-1 to 3-25-6, 3-26-1 to 3-26-3, 3-27-1 to 3-27-9, and 3-28-1 to 3-28-20 NMSA 1978.

For approval of water and sanitation district rates, see 73-21-16 L NMSA 1978.

The 2003 amendment, effective April 8, 2003, deleted "as defined in the Electric Utility Industry Restructuring Act of 1999" following "and transmission cooperative" in Subsections A and B and added Subsection E.

The 2000 amendment, effective March 7, 2000, in Subsection A, added "or the rates, service, securities or class I or class II transactions of a generation and transmission cooperative as defined in the Electric Industry Restructuring Act of 1999" at the end of the second sentence, inserted "generation and transmission cooperatives, or by" near the beginning of the third sentence; in Subsection B, inserted the phrase beginning "with respect to a generation" and ending "to the extent provided in Subsection D of this section, or" and deleted "except regulation of abandonment pursuant to Section 62-7-8 NMSA 1978" from the end, as well as from Subsection C following "gas or petroleum"; and added Subsection D.

The 1996 amendment, effective March 6, 1996, in Subsection A, inserted "a class A county as described by Section 4-36-10 NMSA 1978", and made stylistic changes.

The 1993 amendment, effective April 8, 1993, in Subsection A, substituted "reservations" for "reservation" in the first sentence, divided the former second sentence into the present second and third sentences, and inserted references to a class B county as defined in Section 4-36-8 NMSA 1978 in two places in the second sentence and in three places in the third sentence; and in Subsection B and the first sentence of Subsection C, made stylistic changes.

ANNOTATIONS

Express jurisdiction over rates is given to commission. — This section vests in the commission express jurisdiction, among other things, to regulate and supervise every public utility as respects its rates. *Potash Co. of*

Am. v. N.M. Pub. Serv. Comm'n, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Including jurisdiction over increase in contract rate. — Where the commission had entered an order authorizing a public utility to enter into a contract and to continue to charge the gas rate therein specified until further notice and on the ex parte petition of the utility subsequently entered an interlocutory order making a rate increase to be effective until the commission could hold a hearing to determine and set a new and proper rate, the commission was moving strictly in conformity with the act creating it to determine one of the major questions submitted to its jurisdiction - a question of rates. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Sanitary projects association not a public utility.

— A sanitary projects association (see Article 29 of Chapter 3 NMSA 1978) was not transformed into a public utility by selling water to a limited number of nonmember water haulers and was not subject to the public service commission's (now public regulation commission's) regulatory jurisdiction. *El Vadito De Los Cerrillos Water Ass'n v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-041, 115 N.M. 784, 858 P.2d 1263.

Commission is vested with considerable discretion in determining whether a rate to be received and charged is just and reasonable. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Commission does not have exclusive jurisdiction over rate disputes. — Neither N.M. Const., art. XI, § 7 (now repealed) nor the Telephone and Telegraph Company Certification Act grants the state corporation commission (now public regulation commission) general power and exclusive jurisdiction over disputes involving rates charged by a telephone company. *First Cent. Serv. Corp. v. Mountain Bell Tel.*, 1981-NMCA-012, 95 N.M. 509, 623 P.2d 1023 (decided prior to 1996 amendment to N.M. Const., art. XI, § 2).

Scope of authority. — Commission staff had the capacity to conduct settlement negotiations to determine the rate treatment of a utility's ownership interest in a nuclear generating station. *Attorney Gen. v. N.M. Pub. Serv. Comm'n*, 1991-NMSC-028, 111 N.M. 636, 808 P.2d 606.

Regulation of "optional utility programs." — Commission had jurisdiction to require utility to establish a corporate subsidiary for purposes of instituting gas and electric "optional utility programs," which included surge suppression, maintenance and repair services, information services, and power quality solutions. *PNM Elec. Servs. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-017, 125 N.M. 302, 961 P.2d 147.

Complete remedy for testing rates provided. — The Public Utility Act envelops the commission with an aura of broad power and jurisdiction to determine just and reasonable rates and sets up a complete remedy within the framework of the act for testing their propriety and reasonableness. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Reasonable variations in rates permissible. — Subsection D of this section explicitly authorizes the New Mexico public regulation commission to conduct a hearing concerning the reasonableness of proposed rates and establish reasonable rates; rates incorporating unreasonable differences or discriminations would be unreasonable under Subsection D; there is nothing in the statute,

however, indicating that the legislature intended to impose a flat ban on reasonable variations in utility rates of service between localities due to differing costs of service to different areas. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Where generation and transmission cooperative filed with the New Mexico public regulation commission new advice notices setting interim utility rates, during the pendency of a suspended new utility rate design, that set one rate for protesting members of the cooperative and a different rate for non-protesting members of the cooperative, the commission's decision to reject the advice notices, claiming that they were discriminatory as a matter of law, was contrary to law; this section does not prohibit reasonable variations in utility rates, and the New Mexico supreme court held that the rates that the generation and transmission cooperative prescribe were not unreasonably discriminatory and there was no evidence otherwise of unreasonable discrimination. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Authority over generation and transmission cooperatives. — Subsection D of this section is the only Public Utility Act's source of the New Mexico public regulation commission's authority over the utility rates of a generation and transmission cooperative. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Where generation and transmission cooperative filed with the New Mexico public regulation commission new advice notices setting interim utility rates, during the pendency of a suspended new utility rate design, that set one rate for protesting members of the cooperative and a different rate for non-protesting members of the cooperative, the commission's reliance on 62-8-6 NMSA 1978 to reject the advice notices, claiming that they were discriminatory as a matter of law, was contrary to law; 62-8-6 NMSA 1978 cannot be the source of the commission's authority to disapprove the rates of a generation and transmission cooperative when the language of 62-8-6 NMSA 1978 expressly applies only to public utilities, and when Subsection D of this section is the only Public Utility Act's source of the commission's authority over the utility rates of generation and transmission cooperatives. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

A hearing concerning reasonableness is mandatory following a determination of "just cause". — When the New Mexico public regulation commission determines just cause in at least three protests of any generation and transmission cooperative advice notice, Subsection D of this section requires a commission hearing on the reasonableness of the protested rates, without distinguishing between interim and permanent rates. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Where generation and transmission cooperative filed with the New Mexico public regulation commission new advice notices setting interim utility rates, during the pendency of a suspended new utility rate design, that set one rate for protesting members of the cooperative and a different rate for non-protesting members of the cooperative, the commission's decision to reject the advice notices without a hearing on reasonableness, claiming that the interim rate design was identical to the suspended rate design, was contrary to law; following a determination of just cause in at least three protests of any generation and transmission cooperative advice notice, Subsection D of this section requires a commission hearing on the reasonableness of the protested rates, without distinguishing between interim and permanent rates. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Public Regulation Commission Rule 27 does not apply to generation and transmission cooperatives. — Rule 27, the New Mexico public regulation commission's regulation establishing that a utility has the burden of supporting its interim rate relief request with evidence, is a form of relief from the rate-making powers the commission exercises over public utilities and not over generation and transmission cooperatives. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Where generation and transmission cooperative filed with the New Mexico public regulation commission new advice notices setting interim utility rates, during the pendency of a suspended new utility rate design, that set one rate for protesting members of the cooperative and a different rate for non-protesting members of the cooperative, the commission's decision to reject the advice notices without a hearing, claiming the advice notices lacked the evidentiary support required by Rule 27, which establishes that a utility has the burden of supporting its interim rate relief request with evidence, was contrary to law; interim rate relief is a concept unique to public utilities because the only way a public utility can change its rates is by commission approval; a generation and transmission cooperative does not need to seek the commission's approval for interim rates because a generation and transmission cooperative can agree to a new rate and file that new rate pursuant to Subsection D of this section without requesting interim rate relief under Rule 27, and Subsection D does not require a generation and transmission cooperative to carry any burden of proof or pleading in order to set its rates. *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013.

Requiring exhaustion of administrative remedies is constitutional. — The requirement of the Public Utility Act that a person first exhaust his administrative remedy before resorting to the courts does not violate N.M. Const., art. VI, § 13, granting general jurisdiction to the district courts except as elsewhere limited in such constitution. *Smith v. Southern Union Gas Co.*, 1954-NMSC-033, 58 N.M. 197, 269 P.2d 745.

Public service commission's (now public regulation commission's) order unconstitutional. — Orders of the public service commission (now public regulation commission) that effectively deregulated the retail side of the electric power industry in New Mexico in the absence of a statutory mandate from the legislature exceeded the commission's authority and violated the separation of powers doctrine. *State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 1999-NMSC-019, 127 N.M. 272, 980 P.2d 55.

All utilities not municipally owned are subject to commission's jurisdiction. — Under the Public Utility Act, the public regulation commission has no jurisdiction over public utilities that are owned and operated by a municipal corporation, unless they agree otherwise. *City of Sunland Park v. N.M. Pub. Regulation Comm'n*, 2004-NMCA-024, 135 N.M. 143, 85 P.3d 267, cert. denied, 2004-NMCERT-002, 135 N.M. 169, 86 P.3d 47.

Power of commission does not extend to acts of utility not affecting its public duties; its jurisdiction is limited to matters or controversies wherein the rights of a utility and the public are involved. Its duties begin and end with conservation of the public interest, and are not concerned with individual rights of private litigants, and, ordinarily, it has no power to adjudicate purely private matters between a utility and an individual, or between two utilities. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Jurisdiction of condemnation proceedings. — Because the 2000 amendment to Subsection A of this section exempted generation and transmission cooperatives from the regulatory jurisdiction of the public regulation

commission; the commission lacked jurisdiction to consider an application under Section 42A-1-9 NMSA 1978 by a generation and transmission cooperative to enter and survey land for condemnation suitability studies. *Tri-State Generation & Transmission Ass'n. v. King*, 2003-NMSC-029, 134 N.M. 467, 78 P.3d 1226.

No power to alter common-law rule regarding allocation of relocation costs. — Because the legislature has not empowered the public regulation commission to alter the common-law rule permitting local governments to require utilities to bear the costs of system relocation required by public safety, the commission could not prohibit a city from requiring the Public Service Company of New Mexico to bear the costs of relocation required by ordinance where the commission did not find the ordinance to be unreasonable. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

Construction and enforcement of private contracts are for courts, not commission. — The commission, under the broad powers given it by the legislature, has the right to pass upon the question of whether or not a public utility may enter into a given contract, because of the effect such contract may have upon the power of the utility to carry out its purposes, but when a contract is once entered into, its construction and interpretation, and the rights growing out of the same, including the right to terminate, are to be determined by the courts. Power to pass on validity of a private contract or to enforce its provision is entrusted exclusively to the courts. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Lawsuits involving utility with private parties. — The power in Subsection A of this section to "regulate and supervise" does not preempt lawsuits involving contracts a utility enters into with private parties. *Summit Prop., Inc. v. Public Serv. Co. of N.M.*, 2005-NMCA-090, 138 N.M. 208, 118 P.3d 716, cert. denied, 2005-NMCERT-007, 138 N.M. 145, 117 P.3d 951.

Connection fees. — Where there is nothing to indicate that the commission approved of the specific amount to be rebated in the form of connection fees, without approval by the commission, the connection fees cannot be categorized as "filed rates". *Summit Prop., Inc. v. Public Serv. Co. of N.M.*, 2005-NMCA-090, 138 N.M. 208, 118 P.3d 716, cert. denied, 2005-NMCERT-007, 138 N.M. 145, 117 P.3d 951.

Contract between utility and consortium of municipalities excluded. — Commission acted within its jurisdiction in excluding from jurisdictional rates a contract between a utility and a consortium of municipalities for the purchase of electricity, where exclusion of the contract in no way affected the municipalities' contract; it only affected the utility's ability to recover the cost of the contract from New Mexico consumers. *Public Serv. Co. v. N.M. Public Serv. Comm'n*, 1991-NMSC-018, 111 N.M. 622, 808 P.2d 592.

Rate increases to compensate predecessor utility for expenses. — The public service commission (now public regulation commission) did not have jurisdiction over rate increases requested by a natural gas distribution company to compensate the company's predecessor, which was not currently a public utility, for expenses incurred by the latter in fulfilling its function as a public utility. *Southern Union Gas Co. v. N.M. Pub. Util. Comm'n*, 1997-NMSC-056, 124 N.M. 176, 947 P.2d 133.

Commission has the general and exclusive power to regulate a public utility's rates. — Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), and where the commission had previously authorized

PNM to exercise its options to either renew the leases or repurchase the capacity in accordance with the terms of the leases, PNM was required to demonstrate the prudence of its decisions at Palo Verde for ratemaking purposes because the commission has the general and exclusive power to regulate a public utility's rates regardless of prior authorizations. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), sufficient evidence supported the commission's finding that PNM's decisions were imprudent on the basis that PNM had failed to demonstrate that it considered alternative courses of action where the evidence established that PNM's latest integrated resource plan did not test extension of the leases and purchase of the capacity at Palo Verde against a wide range of futures/scenarios and input assumptions. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Where PNM appealed the New Mexico public regulation commission's (commission) decision to deny it recovery for the costs of converting certain San Juan generating station units to a balanced draft system, which is designed to reduce fugitive emissions, on the grounds that PNM had failed to demonstrate that these costs were prudently incurred, the commission was within its authority in denying recovery, because the commission's finding that balanced draft was included in the permits for San Juan at PNM's request and not because it was required by the applicable environmental regulation was a finding specifically concerning the reasonableness of costs PNM was seeking to include in its rate base and was squarely within the authority of the commission to regulate the rates of public utilities and the obligation of the commission to ensure that those rates are just and reasonable. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Where the New Mexico public regulation commission included in PNM's rate base a \$137.8 million prepaid pension asset (PPA), which is the amount by which investor contributions to a pension trust and earnings on those contributions exceed expenses, the commission did not err in allowing PNM to recover \$137.8 million for its PPA because there was substantial evidence to support the commission's determination that the PPA was investor, rather than ratepayer, funded and the commission's decision was in accordance with law. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Denial of due process. — Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), and where the commission found that PNM's actions in renewing and reacquiring the leases exposed ratepayers to costs associated with nuclear decommissioning responsibilities that likely would not have been incurred had an alternative resource other than nuclear been selected and denied recovery for all future nuclear decommissioning costs, the commission denied PNM's right to due process of law, because PNM was not given sufficient notice of a potential permanent disallowance of all recovery for its future contributions to the nuclear decommissioning trusts and was not afforded an opportunity to be heard on the issue. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

If wellhead transactions are not involved. — Subsection B makes it abundantly clear that the commission can disallow, for rate-making purposes, any portion of a price paid by a utility which the commission finds to be unreasonable unless wellhead transactions are involved.

Maestas v. N.M. Pub. Serv. Comm'n, 1973-NMSC-096, 85 N.M. 571, 514 P.2d 847.

Commission may not order that refund be passed on to consumers. — Commission has no express or implied statutory authority to order the flow-through of refunds to electric company from power supplier to consumers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Where refund is not trust fund for consumers. — Where refund was ordered paid over to power company by the federal power commission without any restrictions, and there was nothing in the order indicating an intention on the part of the commission to create a "trust fund" for the benefit of the ultimate consumers, the refund did not constitute a trust fund belonging to company's customers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Commission's duty under Subsection C. — Commission is only required to find the ultimate fact, that being the reasonableness of the cost of fuel to a utility under Subsection C, and is not required to give reasons for its decision or to make a finding that is not an ultimate finding, such as the arms-length nature of transaction between utility and affiliate from which it purchased the fuel. *Attorney Gen. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-081, 101 N.M. 549, 685 P.2d 957.

Exemption from state antitrust law. — Arrangements between utilities approved and regulated by commission acting under statutory authority are exempt from state antitrust law. *Gonzales v. Public Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

Supervision of transactions with affiliates and nonaffiliates distinguished. — Normal burden to be met in making a prima facie case regarding costs incurred in transactions with nonaffiliates is a demonstration that the costs were, in fact, incurred; however, the normal burden regarding costs incurred in transactions with affiliates is heavier, requiring a showing of the reasonableness of the costs. *Attorney Gen. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-081, 101 N.M. 549, 685 P.2d 957.

Commission's general jurisdiction includes safety regulations and inspections. — The general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations includes the power to make safety regulations and enforce them through inspections. 1972 Op. Att'y Gen. No. 72-35.

General jurisdiction does not cover water and sanitation districts. — The legislature did not intend to place water and sanitation districts under the general jurisdiction of the commission. 1971 Op. Att'y Gen. No. 71-56.

Approving water and sanitation district rates. — Water and sanitation districts have not been declared to be subject to the jurisdiction of the commission except in the limited area of approving the district board's rates, tolls and charges. 1971 Op. Att'y Gen. No. 71-56.

It is the commission's duty to protect not only the utility but also its patrons. 1969 Op. Att'y Gen. No. 69-81.

Rules and regulations have force of law. — The rules and regulations of the commission duly adopted under this section and Section 62-6-24 NMSA 1978 have the force and effect of law which a utility must obey. 1969 Op. Att'y Gen. No. 69-81.

Compliance with rules excuses discontinuance of service under hazardous conditions. — Compliance with rules of the commission permitting a public utility to immediately discontinue service in the event of a condition determined by the utility to be hazardous would be a defense to a criminal action upon a refusal to render electric service, but the burden would be upon the utility to produce some evidence that the condition was actually hazardous if the criminal action was brought against it, and to prove the existence of the rule itself. 1969 Op. Att'y Gen. No. 69-81.

All utilities not municipally owned are subject to commission's jurisdiction. — The commission is given authority by virtue of this section to regulate and supervise every private utility in respect to its rates and service regulations. This same statute specifically withholds from the commission any jurisdiction to regulate or supervise the rates or service of any utility owned and operated by a municipal corporation either directly or through a municipally owned corporation unless said municipality shall exercise its option to come within the provisions of the Public Utility Act as provided in Section 62-6-5 NMSA 1978. 1957-58 Op. Att'y Gen. No. 57-101.

The commission is not empowered to regulate or supervise the service and rates set by municipally owned utilities either in or outside the corporate limits. 1943-44 Op. Att'y Gen. No. 43-4395.

Commission's jurisdiction exempts utilities from liquefied petroleum gas statutes. — A public utility is exempt from the provisions of the law applicable to liquefied petroleum gases (Section 70-5-1 NMSA 1978 et seq.). The law places the general and exclusive power and jurisdiction to regulate and supervise every public utility in the commission. 1961-62 Op. Att'y Gen. No. 62-07.

Commission may delegate some of its authority over liquefied petroleum gas utilities. — The commission is authorized by this section and by the common law to delegate its authority to inspect and test liquefied petroleum gas utilities to the liquefied petroleum gas commission (now construction industries commission). Only the public service commission (now public regulation commission) can promulgate safety regulations, however, and it must make the final order regarding any violations of regulations. 1972 Op. Att'y Gen. No. 72-35.

Unregulated village must comply with liquefied petroleum gas statutes. — Inasmuch as municipally operated and owned utilities are not subject to regulation by the commission (unless there has been a local option election), a village is required to comply with provisions relating to liquefied petroleum gas. 1947-48 Op. Att'y Gen. No. 48-5156.

Commission may disallow unreasonable gas prices in fixing rates. — This section gives the commission some authority to review the prices of certain intrastate sales of natural gas to a utility. However, the nature of this grant of authority is the power only to determine whether the sale prices set by the parties are unreasonable (i.e., outside of a range of acceptable prices), in which case they should be disallowed for rate-making purposes, as expenses of the utility. This authority of the commission to determine the reasonableness of prices is limited to sales other than (i.e., after) the sale from the wellhead. 1977 Op. Att'y Gen. No. 77-01.

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Res. J. 599 (1967).

For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M. L. Rev. 184 (1973).

For article, "State Regulation in a Deregulated Environment: A State-Level Regulator's Lament," see 27 Nat. Res. J. 799 (1988).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M. L. Rev. 287 (1979).

For 1984-88 survey of New Mexico administrative law, see 19 N.M. L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 9 to 15, 240.

Power of public service commission to increase franchise rates, 3 A.L.R. 730, 9 A.L.R. 1165, 28 A.L.R. 587, 29 A.L.R. 356.

State regulation of rates to consumers of gas or electricity transported across state lines for light or power purposes, 7 A.L.R. 1094.

Power of state to change contract rates, 9 A.L.R. 1423.

Patron's right to question reasonableness of public utility rate authorized by legislature, 12 A.L.R. 404.

Right of public service corporation to change rate while another rate is undetermined, 16 A.L.R. 1219.

Termination of federal control as restoring rates fixed by public service commission, 19 A.L.R. 684, 52 A.L.R. 296.

Valuations for rate making as affected by advance in price conditions due to war, 20 A.L.R. 555.

Right to fix new rate for public utility where court sets aside rate fixed by commission as confiscatory, 57 A.L.R. 146.

Power of state or municipality to fix minimum public utility rates, 68 A.L.R. 1002.

Power of state or public service commission to regulate rates of municipally owned or operated public utility, 76 A.L.R. 851, 127 A.L.R. 94.

Profit factor in determining rates for municipally owned or operated public utility, 90 A.L.R. 700.

Allowance for depletion or amortization in respect of natural resources in fixing rates, 91 A.L.R. 1413.

Prohibition as means of controlling action of commission as to rates, 115 A.L.R. 19, 159 A.L.R. 627.

Adequacy, as regards right to injunction, of other remedy for review of order fixing public utility rates, 8 A.L.R.2d 839.

Right of customers of public utility with respect to fund representing a refund from another supplying utility upon a reduction of latter's rates, 18 A.L.R.2d 1343.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority, 85 A.L.R.4th 894.

Public service commission's implied authority to order refund of public utility revenues, 41 A.L.R.5th 783.

73B C.J.S. Public Utilities § 68.

62-6-4.1. Contract carriage.

A. The intent and purpose of this section is to encourage lower costs of natural gas for New Mexico consumers by providing competition in natural gas markets through contract carriage. Lower fuel costs are an integral part of New Mexico's economic development efforts because they preserve existing jobs, facilitate expansion of the state's businesses and provide incentives for new industry to locate in New Mexico.

B. The commission shall, by rule or order, authorize and require the nondiscriminatory and nonpreferential transportation of natural gas by any person subject to the jurisdiction of the commission for a seller or purchaser of natural gas to the extent of available capacity and subject to Subsections C and D of this section.

C. The commission may, in its discretion, impose such terms and conditions on the transportation of natural gas as may be necessary to safeguard deliverability and operational efficiency and to prevent undue hardship and anticompetitive conduct by a public utility.

D. The rates and charges for the transportation of natural gas under this section shall be just, reasonable, nondiscriminatory and subject to approval by the commission.

E. For purposes of this section, "transportation" means exchange, backhaul, displacement or any other means of transporting and includes gathering.

F. A public utility shall be prohibited from the marketing and brokering of natural gas for delivery within New Mexico under this section. This prohibition shall not exclude a public utility from transporting natural gas for an affiliated corporation. Any contract to transport natural gas for an affiliate shall be an arms-length agreement containing no terms that are unavailable to other-end users, gas brokers or marketers.

G. The commission, upon a finding that a public utility is in violation of this section, may impose upon the utility a civil penalty not to exceed an amount three times the damages established by the complainant in the commission proceeding and issue such orders, including but not limited to a cease and desist order, to assure the nondiscriminatory and nonpreferential transportation of natural gas.

History: Laws 1985, ch. 8, § 1; 1987, ch. 93, § 1; 1993, ch. 282, § 29.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't*

of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, made a stylistic change in Subsection F, and substituted "The commission" for "The public service commission" at the beginning of Subsection G.

The 1987 amendment, effective June 22, 1987, inserted present Subsection A and relettered the former subsections; in Subsection B, inserted "and nonpreferential" following "and require the nondiscriminatory" and substituted "Subsections C and D" for "Subsections B and C"; in Subsection C, added "and anticompetitive conduct by a public utility" at the end; in Subsection D, inserted

"nondiscriminatory" following "shall be just, reasonable"; and added Subsections F and G.

ANNOTATIONS

Law reviews. — For article, "Regulatory Reform of the U.S. Natural Gas Industry: A Summing Up," see 27 Nat. Res. J. 841 (1988).

62-6-4.2. Transition cost recovery.

A. Notwithstanding repeal of the Electric Utility Industry Restructuring Act of 1999, unless otherwise waived, a public utility shall be entitled to an opportunity to recover its transition costs. Utilities may retain these transition costs as a regulatory asset on their books pending recovery, which shall be completed by January 1, 2010.

B. For purposes of this section, "transition costs" means the prudent, reasonable and unmitigable costs other than stranded costs, not recoverable elsewhere under either federally approved rates or rates approved by the commission, that a public utility would not have incurred but for its compliance with the requirements of the Electric Utility Industry Restructuring Act of 1999 and rules promulgated pursuant to that act relating to the transition to open access, and the prudent cost of severance, early and enhanced retirement benefits, retraining, placement services, unemployment benefits and health care coverage to public utility nonmanagerial employees who are laid off on or before January 1, 2003, that are not otherwise recovered as a stranded salary and benefits cost. Transition costs shall not include costs that the public utility would have incurred notwithstanding the Electric Utility Industry Restructuring Act of 1999.

History: Laws 2003, ch. 336, § 1.

Effective dates. — Laws 2003, ch. 336 contained no effective date provision but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

Compiler's notes. — Electric Utility Industry Restructuring Act of 1999, Laws 1999, ch. 294, was codified as Chapter 62, Article 3A NMSA 1978 before being repealed by Laws 2003, ch. 336, § 9, effective June 20, 2003.

62-6-4.3. Public utilities; generating plant investment, construction, acquisition and operation.

A. A public utility may invest in, construct, acquire or operate a generating plant that is not intended to provide retail electric service to New Mexico customers, the cost of which is not included in retail rates and which business activities shall not be subject to regulation by the commission pursuant to the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], except as provided by Section 62-9-3 NMSA 1978. This section shall not diminish a public utility's obligation, by the prudent acquisition of resources, to serve its retail load at a cost of service no higher than the average book cost plus fuel, other operating and maintenance costs and the utility's authorized rate of return on investment of the utility's unregulated generation constructed or acquired after January 1, 2001; provided that this provision does not apply to a public utility that does not acquire unregulated generation after January 1, 2001. The commission shall assure that the regulated business is appropriately credited for any off-system sales made from regulated assets.

B. This section shall apply only to a public utility that began investing in, constructing or acquiring generating plant pursuant to this section before July 1, 2004. This section shall continue to apply until the latest of:

- (1) January 1, 2015;
- (2) the date the public utility divests its interest in [a] generating plant acquired or constructed pursuant to the provisions of this section; or
- (3) the date the plant receives a certificate of convenience and necessity in accordance with Section 62-9-1 NMSA 1978.

History: Laws 2003, ch. 336, § 2.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Effective dates. — Laws 2003, ch. 336 contained no effective date provision but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

62-6-4.4. Gas and electric utilities; combined service.

A public utility that provides both electricity and natural gas distribution services shall not be required to functionally separate its electric and gas transmission, transportation and distribution operations from each other. Any rule or order to the contrary is void. Nothing in this section shall prevent a combined gas and electric distribution company from selling the natural gas commodity to customers pursuant to tariffs approved by the commission.

History: Laws 2003, ch. 336, § 3.

Effective dates. — Laws 2003, ch. 336 contained no effective date provision but, pursuant to N.M. Const., art.

IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

62-6-4.5. Billing; franchise fees; gross receipts taxes.

A. A franchise fee charge shall be stated as a separate line entry on a bill sent by a public utility or a distribution cooperative utility to a customer and shall only be recovered from a customer located within the jurisdiction of the government authority imposing the franchise fee.

B. Any gross receipts taxes collected on electric services received by a retail customer in the state shall be stated as a separate line entry on a bill for electric service sent to the customer by a public utility or distribution cooperative utility.

History: Laws 2003, ch. 336, § 4.

Effective dates. — Laws 2003, ch. 336 contained no effective date provision but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

enter an order requiring a public utility to stop including on customers' bills the franchise fee charges paid by the utility to a county for the right to use county right-of-way to deliver utility service to county residents and businesses. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

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Line item charges for franchise fees. — The public regulation commission did not have jurisdiction to

62-6-5. Local option.

Notwithstanding any of the provisions in Section 62-6-4 NMSA 1978, any municipality desiring to avail itself of all the benefits of the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978] and of the regulatory services of the commission may elect to come within the provisions of that act and to have the utilities owned and operated by it, either directly or through a municipally owned corporation, regulated and supervised under the provisions of that act. When a municipality so elects, in the manner provided in this section, it shall be subject to all the provisions of the Public Utility Act. The election shall be held as follows:

A. at any time after the effective date of the Public Utility Act, the legal voters of any municipality may petition in writing the governing body of the municipality by filing a petition in the office of the municipal clerk to hold an election for the purpose of determining whether the municipality shall be subject to the provisions of that act. If the aggregate of the names signed to the petition equals or exceeds twenty-five percent of the number of legal votes cast in the municipality for governor at the last preceding general election, the governing body of the municipality shall call an election to be held within sixty days of the filing of the petition in accordance with the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. Provided, however, that if a local election is to be held within six months of the filing of the petition, the election provided for in this section shall be held at the same time as that election;

B. the election shall be held in the same manner as and with the same registration books as for other municipal elections. The ballots to be submitted to the voters at the election shall present the following questions:

"For regulation of municipally owned
utilities by the public
regulation commission _____"

Against regulation of municipally owned utilities by the public regulation commission_____".

The votes at the election shall be counted, returned and canvassed as provided for in the Local Election Act. If the majority of all the votes are in favor of regulation of municipally owned utilities, the governing body of the municipality shall declare, by order entered upon the records of the municipality, that it is subject to all the provisions of the Public Utility Act. If the majority of all the votes are against such regulation, the result of the election shall be declared and entered in the same manner; and

C. no elections for the same purpose shall be held within two years of each other.

History: Laws 1941, ch. 84, § 17A; 1941 Comp., § 72-505; 1953 Comp., § 68-5-5; 1993, ch. 282, § 30; 2018, ch. 79, § 100.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For regulation of foreign municipal corporations distributing electricity in state, see 62-1-6 NMSA 1978.

For municipal elections, see 3-8-1 to 3-8-80 and 3-9-1 to 3-9-16 NMSA 1978.

The 2018 amendment, effective July 1, 2018, provided that elections called for the purpose of determining whether the municipality shall be subject to the provisions of the Public Utility Act shall be held as pursuant to the Local Election Act, and made technical and conforming changes; in Subsection A, after "filing of the petition", added "in accordance with the provisions of the Local Election Act", and after "Provided, however, that if a", deleted "general municipal" and added "local"; and in Subsection B, deleted "utility" and added "regulation" preceding "commission" throughout the subsection, and after "canvassed as provided for in", deleted "general municipal elections" and added "the Local Election Act".

The 1993 amendment, effective June 18, 1993, in the introductory language, substituted "Section 62-6-4 NMSA 1978" for "Section 17 hereof" and "may elect" for "created by this Act, shall have the right to elect" in the first sentence, and divided the former first sentence into the present first and second sentences; in Subsection A, substituted "governing body of the municipality" for "Board of Trustees or municipal council" in the first sentence, and rewrote the second sentence; in Subsection B, deleted

"may be available" following "books as" in the first sentence, deleted "to the voters" following "shall present" in the second sentence, deleted "of public utilities" following "regulation" in the second sentence in the last paragraph, and substituted "New Mexico public utility commission" for "New Mexico public service commission" in two places; and made stylistic changes throughout the section.

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City not within commission's jurisdiction. — A city operating a water facility which had not elected to come under the Public Utility Act and which had a population of less than 200,000 was not a public utility within the jurisdiction of the public utility commission (now public regulation commission). *Morningstar Water Users Ass'n v. New Mexico Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28.

Municipality may constitutionally compete with previously franchised utility. — The action of a municipal corporation in undertaking to compete with a privately operated public utility holding a franchise previously granted by the municipality itself in no way violates any constitutional right of the utility whether the right asserted be that based upon the constitutional provision invalidating laws which impair the obligation of a contract or those relating to the taking of property without due process of law, the injuring or destroying of property without just compensation or the denial of the equal protection of the laws. 1957-58 Op. Att'y Gen. No. 58-236.

Section provides exception to exemption of municipalities from commission jurisdiction. — The commission is given authority by virtue of Section 62-6-4 NMSA 1978 to regulate and supervise every private utility in respect to its rates and service regulations. This same statute specifically withholds from the commission any jurisdiction to regulate or supervise the rates or service of any utility owned and operated by a municipal corporation either directly or through a municipally owned corporation unless said municipality shall exercise its option to come within the provisions of the Public Utility Act as provided in this section. 1957-58 Op. Att'y Gen. No. 57-101.

62-6-6. Issuance, assumption or guarantee of securities.

A. The power of a public utility to issue, assume or guarantee securities and to create liens on its property situated within this state is a special privilege subject to the supervision and control of the commission as set forth in the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978].

B. Except as provided in Subsection E of this section, a public utility, when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume or guarantee other securities payable at periods of more than eighteen months after the date thereof for the following purposes only:

(1) making loans or grants from the proceeds of federal loans for economic development projects benefiting its service area;

(2) the acquisition of property;

(3) the construction, completion, extension or improvement of its facilities;

(4) the improvement or maintenance of its service;

(5) the discharge or lawful refunding of its obligations; or

(6) the reimbursement of money actually expended for purposes set forth in this subsection from income or from any other money in the treasury not secured by or obtained from the issue, assumption or guarantee of securities, within five years next prior to the filing of an application with the commission for the required authorization.

C. Notwithstanding the provisions of Subsection B of this section, the commission may authorize issuance by a public utility of shares of stock of any class as a dividend on outstanding shares of stock of the public utility of any class and may authorize the issuance of the same or a different number of shares of stock of any class in exchange for outstanding shares of stock of any class of the public utility, and the public utility may issue the stock so authorized.

D. The commission shall not authorize a borrowing under the provisions of Paragraph (1) of Subsection B of this section unless the governing board has approved the borrowing by a two-thirds' majority vote of the members present at a special meeting called for that purpose. The commission shall review the terms of the economic development loan or grant to ascertain the adequacy of any collateral, to have the right to inspect books and review the level of co-participation by the borrower or grantee.

E. Commission approval is not required for the issuance, assumption or guarantee of any security of a public utility whose securities are subject to oversight and approval by the federal government pursuant to the Rural Electrification Act of 1936, as amended, or any successor law to that act.

History: Laws 1941, ch. 84, § 18; 1941 Comp., § 72-506; Laws 1947, ch. 5, § 1; 1953 Comp., § 68-5-6; 1991, ch. 110, § 1; 2003, ch. 416, § 2.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2003 amendment, effective July 1, 2003, added "Except as provided in Subsection E of this section" at the beginning of Subsection B and added Subsection E.

The 1991 amendment, effective June 14, 1991, designated the formerly undesignated provisions as Subsections A to C; substituted "subject to the supervision and control of the commission as set forth in the Public Utility Act" for "hereby subjected to the supervision and control of the commission as hereinafter in this act set forth" at the end of Subsection A; in Subsection B, inserted Paragraph (1), inserted the paragraph designations "(2)" to "(6)," and inserted "set forth in this subsection" near the beginning of Paragraph (6); added "Notwithstanding the provisions of Subsection B of this section" at the beginning of Subsection C; added Subsection D; and made related changes and minor stylistic changes in Subsections B and C.

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Unauthorized notes and mortgages are void. — Notes and mortgages issued without authority of the commission are void. *Hogue v. Superior Utils., Inc.*, 1949-NMSC-056, 53 N.M. 452, 210 P.2d 938.

Utility not liable for payment to protect unauthorized mortgage. — Where plaintiff paid \$600 to protect a second mortgage on property of utility company which proved void because it was not authorized by the commission, he could not recover the sum from the utility. *Hogue v. Superior Utils., Inc.*, 1949-NMSC-056, 53 N.M. 452, 210 P.2d 938.

Utility may recover meter deposits applied on unauthorized note and mortgage. — Utility company was properly granted judgment for meter deposits where they were applied by sellers of the capital stock on a note and mortgage of the company which were invalid because not authorized by the commission. *Hogue v. Superior Utils., Inc.*, 1949-NMSC-056, 53 N.M. 452, 210 P.2d 938.

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 255 to 263.

Regulating issuance of securities by public utilities through public service commissions, 41 A.L.R. 889.

Conclusiveness of commission's decision or order as to issuance of securities, 41 A.L.R. 922.

Control over issue of securities to capitalize or fund bond discount, 72 A.L.R. 1232.

62-6-7. Application to commission; order of commission.

Such public utility shall, by written petition filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption or guarantee of securities, and the application of the proceeds therefrom to the

purposes specified. The commission shall, after such hearing and upon such notice as the commission may prescribe, enter its written order approving the petition and authorizing the proposed securities transactions, unless the commission shall find: that such transactions are inconsistent with the public interest; or that the purpose or purposes thereof are not permitted by this act; or that the aggregate amount of the securities outstanding and proposed to be outstanding will exceed the fair value of the properties and business of the public utility.

History: Laws 1941, ch. 84, § 19; 1941 Comp., § 72-507; 1953 Comp., § 68-5-7.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v.*

N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For investment securities, see 55-8-101 to 55-8-511 NMSA 1978.

For security dealers, see 58-13B-3 to 58-13B-19 NMSA 1978.

62-6-8. Exempted securities.

A. A public utility may issue securities, other than stock or stock certificates, payable at periods of not more than eighteen months after the date of issuance of same, and secured or unsecured, without application to or order of the commission, but no such securities so issued shall in whole or in part be refunded by any issue of stocks, stock certificates or other securities having a maturity of more than eighteen months, except on application to and approval of the commission.

B. If a utility proposes to accomplish proposed financing by the issuance and delivery of notes, bonds or other evidences of indebtedness and of mortgages, deeds of trust or other security instruments therefor to the United States of America or any agency or instrumentality thereof, acting solely as the lender or with the participation of one or more other lenders, the application to the commission shall set forth the facts involved, the proposed application of the proceeds therefrom and any approval or expected approval thereof by the United States of America or its agency or instrumentality. No hearing by the commission shall be required for approval of the issuance and delivery of the evidences of indebtedness and security instruments to such lender or lenders and the commission shall approve the issuance and delivery thereof within the time provided in Section 62-6-9 NMSA 1978; provided that for good cause shown, the commission may order that a hearing shall be held with respect to the proposed financing. The order of approval of the commission may be conditioned on the approval of the issuance of the evidences of indebtedness or security by the United States of America or the agency or instrumentality thereof as may be appropriate.

History: 1953 Comp., § 68-5-8, enacted by Laws 1967, ch. 96, § 5; 1971, ch. 9, § 1.

Repeals and reenactments. — Laws 1967, ch. 96, § 5, repealed 68-5-8, 1953 Comp., relating to securities exempted from approval requirements, and enacted a new 68-5-8, 1953 Comp.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed

prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-8.1. Additional jurisdiction.

Except as provided in Subsection E of Section 62-6-6 NMSA 1978 and notwithstanding any other provision of Sections 62-6-1 through 62-6-11 NMSA 1978, the commission shall have jurisdiction over and may regulate, by general order or regulation, securities of a public utility incorporated under the laws of this state that would otherwise be exempt from regulation by the commission pursuant to Section 62-6-6 NMSA 1978 or Subsection A of Section 62-6-8 NMSA 1978 and that is subject to regulation pursuant to 16 USC 824.

History: Laws 1979, ch. 50, § 1; 2003, ch. 416, § 3.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v.*

N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2003 amendment, effective July 1, 2003, added "Except as provided in Subsection E of Section 62-6-6 NMSA 1978 and" at the beginning.

62-6-9. Applications disposed of promptly.

All applications for the issuance, assumption or guarantee of securities shall be placed at the head of the commission's docket and shall be disposed of promptly, and within thirty days after petition is filed with the commission unless it is necessary for good cause to continue same for a longer period. Whenever such application is continued beyond thirty days after the time it is filed, the commission shall enter an order making such continuance and stating fully the facts necessitating same.

History: Laws 1941, ch. 84, § 21; 1941 Comp., § 72-509; 1953 Comp., § 68-5-9.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8,

amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-10. No obligation on state.

No provision of this act, nor any act or deed done or performed in connection therewith, shall be construed to obligate the state of New Mexico to pay or guarantee in any manner whatsoever any security authorized, issued, assumed or guaranteed under the provisions of this act.

History: Laws 1941, ch. 84, § 22; 1941 Comp., § 72-510; 1953 Comp., § 68-5-10.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8,

amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-11. Securities voidable unless approved.

All securities issued, assumed or guaranteed without application to and approval of the commission, except the securities mentioned in Sections 62-6-8 and 62-6-8.1 NMSA 1978, are voidable with the consent of the commission.

History: Laws 1941, ch. 84, § 23; 1941 Comp., § 72-511; 1953 Comp., § 68-5-11; Laws 1979, ch. 50, § 2; 2005, ch. 339, § 3.

The 2005 amendment, effective July 1, 2005, deleted the former provision that securities are void and provides that securities are voidable with the consent of the commission.

62-6-12. Acquisitions, consolidations, etc.; consent of commission.

A. With the prior express authorization of the commission, but not otherwise:

(1) any two or more public utilities may consolidate or merge with each other so as to form a new concern;

(2) any person and a public utility or public utility holding company may consolidate or merge with each other so as to form a new concern;

(3) stock of a public utility or public utility holding company may be acquired by:

(a) any person who prior to the acquisition of any such stock or part thereof is a person subject to regulation or classified as a public utility or public utility holding company in any jurisdiction;

(b) any person who is or during the course of an acquisition covered by this section becomes subject to regulation or is classified as a public utility or public utility holding company in any jurisdiction based on reasons other than solely the acquisition described in this paragraph;

(c) any person associated, affiliated or acting in concert with any person subject to regulation or classified as a public utility or public utility holding company in any jurisdiction for the purposes of any acquisition subject to the provisions of this section;

(d) any person associated, affiliated or acting in concert with any person described in Subparagraphs [Subparagraph] (a), (b) or (c) of this paragraph; or

(e) any person who, during the course of an acquisition covered by this section, merges or consolidates with a person described in Subparagraphs [Subparagraph] (a), (b), (c) or (d) of this paragraph.

(4) any public utility may sell, lease, rent, purchase or acquire any public utility plant or property constituting an operating unit or system or any substantial part thereof; provided, however, that this paragraph shall not be construed to require authorization for transactions in the ordinary course of business.

B. Any consolidation, merger, acquisition, transaction resulting in control or exercise of control, or other transaction in contravention of this section without prior authorization of the commission shall be void and of no effect.

C. Nothing in this section shall limit or expand the authority of the commission with respect to Class II transactions as provided in the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978].

History: Laws 1941, ch. 84, § 24; 1941 Comp., § 72-512; 1953 Comp., § 68-5-12; Laws 1983, ch. 250, § 1; 1989, ch. 33, § 1.

Bracketed material. — The bracketed material was added by the compiler and is not part of the law.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," see 62-3-3 NMSA 1978.

The 1989 amendment, effective June 16, 1989, designated the formerly undesignated introductory paragraph as Subsection A and inserted "prior" therein; deleted subsection designation "A" preceding Subsection A(1) and made a minor stylistic change in that subsection; added Subsection A(2); substituted present Subsection A(3) for former Subsection B, which read "any public utility may acquire the stock or any part thereof of any other public utility"; redesignated former Subsection C as present Subsection A(4) and made a minor stylistic change therein; and added present Subsections B and C.

The 1983 amendment added "and" at the end of Subsection B and added the language beginning with "or any substantial part thereof" at the end of Subsection C.

ANNOTATIONS

Jurisdiction of municipal condemnation of public utility. — Subsection A(4) of this section and Section 62-9-5 NMSA 1978 (abandonment) do not give the commission jurisdiction over municipal condemnations of regulated water and sewer utilities. *United Water N.M., Inc. v. N.M. Pub. Util. Comm'n*, 1996-NMSC-007, 121 N.M. 272, 910 P.2d 906.

Consent to sell real property. — The New Mexico public regulation commission has exclusive jurisdiction to determine whether a public utility's sale of real property is required to be approved by the commission. *OS Farms, Inc. v. N.M. Am. Water Co., Inc.*, 2009-NMCA-113, 147 N.M. 221, 218 P.3d 1269.

Where defendant, which was a public water utility regulated by the New Mexico public regulation commission, sold land to plaintiff; defendant reserved all water rights to its own use; defendant originally purchased the land to acquire water rights; and defendant decided to sell the land, reserving the water rights, to reduce plant investment and decrease the cost of maintaining the land, the public regulation commission had exclusive jurisdiction to determine whether the sale of the land required approval by the commission. *OS Farms, Inc. v. N.M. Am. Water Co., Inc.*, 2009-NMCA-113, 147 N.M. 221, 218 P.3d 1269.

Law reviews. — For note, "United Water New Mexico v. New Mexico Public Utility Commission: Why Rules Governing the Condemnation and Municipalization of Water Utilities May Not Apply to Electric Utilities," see 38 Nat. Res. J. 667 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 14, 72.

62-6-13. Application; approval of commission.

Application shall be made by the interested public utility by written petition containing a concise statement of the proposed transaction, the reason therefor and such other information as may reasonably be required by the commission. Upon the filing of such application, the commission shall promptly investigate the same, with such hearing and upon such notice as the commission may prescribe, and unless the commission shall find that the proposed transaction is unlawful or is inconsistent with the public interest, it shall give its consent and approval in writing.

History: Laws 1941, ch. 84, § 25; 1941 Comp., § 72-513; 1953 Comp., § 68-5-13.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Only notice necessary is such as commission requires. — The notice requirement under Section 62-10-5 NMSA 1978 has application only when a proceeding is initiated by a complaint; otherwise the only notice necessary is such as is required by the commission: 1947-48 Op. Att'y Gen. No. 48-5138.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 255 to 263.

Merger or consolidation without required permit as affecting validity of contracts, 30 A.L.R. 890, 42 A.L.R. 1226, 118 A.L.R. 646.

73B C.J.S. Public Utilities §§ 68, 72.

62-6-14. Valuation by the commission.

A. When in the exercise of its powers and jurisdiction it is necessary for the commission to consider or ascertain the valuation of the properties or business of a public utility, or make any other determination involved in the fixing or setting of rates for a utility, the commission shall give due consideration to the history and development of the property and business of the particular public utility, to the original cost thereof, to the cost of reproduction as a going concern, to the revenues, investment and expenses of the utility in this state and otherwise subject to the commission's jurisdiction, to construction work in progress and to other elements of value and rate-making formulae and methods recognized by the laws of the land for rate-making purposes.

B. For the purpose of making such valuation or determinations, the members of the commission and its duly authorized agents and employees shall at all reasonable times have free access to the property, accounts, records and memoranda of the utility whose property and rights are being valued, and the utility shall aid and cooperate with the commission and its duly authorized agents and employees to the fullest degree for the purpose of facilitating the investigation.

C. In making any determination involving the rates or service of a utility, the commission may change its past practices or procedures, provided that substantial evidence on the record justifies such a change.

D. The commission shall set rates based on a test period that the commission determines best reflects the conditions to be experienced during the period when the rates determined by the commission take effect. If a future test period is proposed, the commission shall give due consideration that the future test period may best reflect those conditions.

E. Upon a request to include construction work in progress in the rate base, the commission shall grant the request only upon a finding that a project's costs are reasonable. The commission shall not include the associated allowance for funds used during construction in income. The projects for which the commission shall grant a request include environmental improvement projects and generation and transmission investments for which the utility has obtained a certificate of public convenience and necessity; provided that the projects are anticipated to be in service no later than five months after the end of a utility's test period, but in no event later than twenty-four months after the filing date of a utility's rate proceeding.

History: Laws 1941, ch. 84, § 26; 1941 Comp., § 72-514; 1953 Comp., § 68-5-14; Laws 1983, ch. 250, § 2; 2009, ch. 113, § 2.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82,

effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," see 62-3-3 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "commission's jurisdiction," added "to construction work in progress" and added Subsections D and E.

The 1983 amendment divided the formerly undivided language into Subsections A and B and, in Subsection A, substituted "is necessary" for "shall be necessary" and "or make any other determination involved in the fixing or setting of rates for a utility, the commission shall" for "it shall, in arriving at such valuation" and inserted "to the revenues, investment and expenses of the utility in this state and otherwise subject to the commission's jurisdiction" and "and rate-making formulae and methods." The 1983 amendment also inserted "or determinations" in Subsection B and added Subsection C.

ANNOTATIONS

Commission's remedy for utility's imprudent decision was reasonable. — Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), and where the commission found that PNM's decisions were imprudent on the basis that PNM had failed to demonstrate that it considered alternative courses of action, the commission's remedy of disallowing recovery for the amount PNM paid for the 64.1 MW over the net book value of that capacity and allowing PNM to recover the costs of the five renewed leases was reasonable and lawful. The commission established valuations for the 64.1 MW and the renewed lease, which it considered appropriate to protect ratepayers and result in just and reasonable rates, and such an approach is a lawful and reasonable exercise of the commission's authority to determine the rate base of a utility and its obligation to ensure that rates are just and reasonable. It was reasonable and lawful for the commission to conclude that a total disallowance was not justified. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Method does not violate the statutory rate caps. — Where the New Mexico public regulation commission (commission) ordered PNM to revise its method for calculating fuel costs, specifically ordering PNM to remove renewable energy from its fuel and purchased power cost adjustment clause calculation, and where PNM proposed a method of calculating fuel costs which would partially correct the fuel cost misallocation by more accurately charging customers for the true costs of their conventional

energy usage, the commission lawfully exercised its authority in adopting the new method, because the new method did not impose additional charges for renewable energy usage on large and exempt customers, but rather increased their fuel costs to more accurately reflect the true costs of their conventional energy usage. The new method for calculating fuel costs does not violate the statutory rate caps set forth in this section, and its adoption was consistent with due process. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Commission not limited in method of valuating utility or setting rates. — Neither New Mexico case law nor the Public Utility Act imposes any one particular method of valuation upon the commission in ascertaining the rate base of a utility; nor does the spirit of the statute tie the commission down to the consideration of a single factor in establishing rates. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

If plant acquisition adjustment is included as legitimate plant cost, it becomes a part of the rate base upon which a rate of return is to be computed. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

New Mexico is not "original cost" jurisdiction, but a "fair value" jurisdiction. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

"Used and useful" concept is but one factor among many to be considered by the commission in its rate base analysis. *New Mexico Indus. Energy Consumers v. N.M. Pub. Serv. Comm'n*, 1986-NMSC-059, 104 N.M. 565, 725 P.2d 244.

Utility may not capitalize capital investments previously treated as operating expenses. — Where prior capital investments were charged to operating expenses and the rate apparently fixed on that basis, a utility cannot later capitalize such amounts in determining original cost for ratemaking purposes. *Moyston v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-062, 76 N.M. 146, 412 P.2d 840.

Commission may deduct deferred tax reserve from rate base. — The court did not err in failing to hold unreasonable and unlawful the commission's deduction from rate base of the company's reserve for deferred taxes because the statute does not compel inclusion of value of the latter type in the rate base and because the laws of the land do lend support for the commission's action. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Law reviews. — For article, "The Regulation of Public Utilities," see 10 Nat. Res. J. 827 (1970).

For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 138 to 172.

Valuations for rate making as affected by advance in price conditions due to war, 20 A.L.R. 555.

Propriety of considering capital structure of utility's parent company or subsidiary in setting utility's rate of return, 80 A.L.R.4th 280.

73B C.J.S. Public Utilities §§ 18 to 33.

62-6-15. Contract rate with the municipality and utilities; how established.

Rates and service regulations may be established by contract between the municipality and the utility for a specified term not exceeding twenty-five years, but only by and with the approval of the commission to be expressed by its order. Whenever any such contract shall be made, it shall, before becoming effective, be submitted to the commission. Unless the commission shall find the provisions of any such contract inconsistent with the public interest, the interest of the consumers

and the interest of investors, it shall approve the same, otherwise it shall disapprove the same, and, unless and until so approved, such contract shall be of no effect, but if it be approved, it shall be in all respects lawful. Any such new contract shall provide for a redetermination by the commission of the reasonableness of the rates at such intervals as the commission may prescribe not longer than five years and every order made by the commission approving any contract shall expressly state the intervals at which redetermination of rates shall be made. For the purpose of determining whether any such contract hereafter made is consistent with public interest, the commission shall hold such hearings, after notice, as may be necessary to its determination. This act is intended to make rates in existing franchises and contracts subject to the control of the commission only to the extent that the legislature may lawfully do so. The provisions of this section shall not apply to any contract between a municipality and a utility relating to electric power and energy sales between such entities if the electric power and energy which is the subject of such contract is generated by such municipality's generating facility or its interest in a jointly owned generating facility.

History: Laws 1941, ch. 84, § 27; 1941 Comp., § 72-515; 1953 Comp., § 68-5-15; Laws 1979, ch. 260, § 17.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

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Contract on behalf of municipal inhabitants allowed. — This section allows municipalities to contract

with a public utility for proposed rates and service regulations for utility service to municipal inhabitants. Any rates or service regulations set forth in the contract do not take effect, however, until they have been approved by the commission, which retains plenary authority to approve, disapprove, or modify them. *City of Albuquerque v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-021, 115 N.M. 521, 854 P.2d 348.

Commission has jurisdiction over municipal contract rates. — The legislature intended to confer general and exclusive jurisdiction on the commission to regulate every intrastate rate to be charged by public utilities for the services they render to the extent provided in this article, including jurisdiction over contract rates between public utilities and municipalities. 1951-52 Op. Att'y Gen. No. 52-5597.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Carriers § 105.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

62-6-16. Commission may prescribe uniform accounts.

The commission may, when it deems it advisable to do so, upon notice and hearing, establish a uniform system of accounts for each utility, which system shall be uniform for all utilities of the same kind and class, and may make such regulations regarding the accounts of each utility for the purpose of insuring [ensuring] uniform and correct books of account and record as in the judgment of the commission may be necessary to carry out any of the provisions of this act.

History: Laws 1941, ch. 84, § 28; 1941 Comp., § 72-516; 1953 Comp., § 68-5-16.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is

ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 68.

62-6-17. Office, books and records; sanction; penalty.

A. Every utility furnishing service within the state shall maintain an office located in the state. The commission by order may require any utility or any officer or agent of any utility to produce

within the state or provide access to, at such reasonable time and place as the commission may designate, any books, records, accounts or documents kept in any office or place within or without the state, or certified copies thereof, whenever the production thereof is reasonably required and pertinent to any matter under investigation before the commission.

B. Whenever the production of books, records, accounts or documents is reasonably required by the commission and pertinent to any matter under investigation before the commission, the commission may require the utility or any affiliated interest participating in a Class I or II transaction to produce or provide access to, at such reasonable time and place as the commission may designate, such books, records, accounts or documents.

C. Any person whose interest may be adversely affected by the production of any books, records, accounts or documents may petition the commission for a protective order for confidential or proprietary information. The commission shall determine the materiality and relevancy of the books, records, accounts or documents to any matter before the commission and determine whether such books, records, accounts or documents contain confidential or proprietary information. If the commission determines such books, records, accounts or documents contain confidential or proprietary information that is material and relevant to the proceeding, it shall determine whether the public interest requires that such books, records, accounts or documents be produced in any hearing or investigation held under the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] or that an abstract of or the extraction of specific information from such books, records, accounts or documents be produced for use in any such hearing or investigation. Any books, records, accounts or documents determined under this section to contain confidential or proprietary information are not subject to the Public Records Act [Chapter 14, Article 3 NMSA 1978].

D. For so long as such information determined by the commission to contain confidential or proprietary information retains its confidential or proprietary character, any person who intentionally discloses such confidential or proprietary information is guilty of a misdemeanor and upon conviction shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).

History: Laws 1941, ch. 84, § 29; 1941 Comp., § 72-517; 1953 Comp., § 68-5-17; Laws 1980, ch. 85, § 3; 1982, ch. 109, § 8; 1993, ch. 351, § 3.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time,

however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

ANNOTATIONS

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

62-6-18. Utilities required to report to commission.

Every utility[,], when and as required by the commission, shall file with the commission such annual report and such other information as the commission may reasonably require. The commission shall prepare and distribute to every utility blank forms for the reports required under this section.

History: Laws 1941, ch. 84, § 30; 1941 Comp., § 72-518; 1953 Comp., § 68-5-18.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v.*

N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Carriers §§ 219, 220; 64 Am. Jur. 2d Public Utilities § 235.

73B C.J.S. Public Utilities §§ 66, 67, 75.

62-6-19. Standard of service.

A. The commission may prescribe reasonable and adequate service regulations and standards of service rendered or to be rendered by any utility and may prescribe such regulations for the examination and testing of such service and for the measurement thereof.

B. In order to assure reasonable and proper utility service at fair, just and reasonable rates, the commission may investigate:

(1) Class I transactions to determine the reasonableness of the cost and contract conditions to the utility in any such transaction; and

(2) Class II transactions or the resulting effect of such Class II transactions on the financial performance of the public utility to determine whether such transactions or such performance have an adverse and material effect on such service and rates.

C. A public utility engaging in any Class I or Class II transaction shall have the burden to produce such evidence and information as is sufficient to demonstrate:

(1) that such Class I transaction has resulted in reasonable cost and contract conditions to the utility; and

(2) that such Class II transaction or the resulting effect of such Class II transaction on the financial performance of the public utility has not materially and adversely affected the utility's ability to provide reasonable and proper utility service at fair, just and reasonable rates.

If the commission finds that the utility has failed to meet its burden, the commission may issue orders consistent with the authority granted to the commission under the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] to assure the provision of such service at such rates. Any such order that explicitly and directly requires the production of information shall be in accordance with Section 62-6-17 NMSA 1978.

D. The commission may issue such orders in connection with an evidentiary proceeding involving a public utility as it finds appropriate and necessary to assure that appropriate cost allocations are made and that no cross-subsidization occurs between the utility and an affiliated interest.

E. The commission shall, by November 30, 1982, promulgate rules and may amend such rules thereafter, to implement the provisions of Subsections B, C and D of this section, including the manner of conducting such investigations and making such determinations, and the specification of such reporting requirements as may be reasonably necessary and as are consistent with the provisions of this 1982 act.

F. For a period of thirteen months from the effective date of this subsection, no utility or affiliated interest shall engage in a new Class II transaction described in Paragraph (1) or (2) of Subsection K of Section 62-3-3 NMSA 1978, nor during that period shall any utility or affiliated interest controlled by a utility engage in any nonutility activity not carried on prior to that effective date except as is necessary to protect or dispose of an asset, unless such nonutility activity had been the subject of substantial negotiations and had been publicly announced prior to the effective date of this section.

F. For a period of fifteen months from the effective date of this subsection, no utility or affiliated interest shall engage in a Class II transaction described in Paragraph (1) or (2) of Subsection K of Section 62-3-3 NMSA 1978, nor during that period shall any utility or affiliated interest controlled by a utility engage in any nonutility activity not carried on prior to that effective date except as is necessary to protect or dispose of an asset.

History: Laws 1941, ch. 84, § 31; 1941 Comp., § 72-519; 1953 Comp., § 68-5-19; Laws 1982, ch. 109, § 9.

Compiler's notes. — The 1982 amendment added two Subsections F.

The term "the effective date of this subsection," referred to in each Subsection F, probably means the effective date of the 1982 act.

Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998,

Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The term, "this 1982 act," referred to in Subsection E, means Laws 1982, ch. 109, which is compiled as 62-3-3, 62-6-17, 62-6-19, 62-8-7, 62-11-1 to 62-11-3, 62-11-5 and 62-11-6 NMSA 1978.

Cross references. — For denial of service by utility being petty misdemeanor, see 30-13-2 NMSA 1978.

ANNOTATIONS

Primary purpose of extending commission's jurisdiction to Class I transactions was to protect against allocation of some of a regulated utility's profits to its unregulated affiliate. *Gas Co. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-002, 100 N.M. 740, 676 P.2d 817.

Commission may impute gas processor's unreasonable revenues to affiliate utility. — Where a company processed natural gas for its affiliate gas utility in a Class I transaction and had unreasonable revenues when compared to similar natural gas processors, the commission was authorized to impute some of those revenues to the affiliate gas utility for rate-making purposes. *Gas Co. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-002, 100 N.M. 740, 676 P.2d 817.

Variations in rates not ipso facto discriminatory. — Section 62-8-6 NMSA 1978 does not prohibit variations in rates, nor does it require "equal service." Rather, it prohibits "unreasonable differences" in rates of service between localities. Allowing municipalities to contract with utilities for service rates to their inhabitants does not, therefore, ipso facto, violate Section 62-8-6 NMSA 1978. *City of Albuquerque v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-021, 115 N.M. 521, 854 P.2d 348.

Company restructuring. — This section allows the commission to disapprove a public utility holding company restructuring prior to its completion. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1987-NMSC-124, 106 N.M. 622, 747 P.2d 917.

The commission properly disapproved a public utility holding company restructuring prior to its completion. This restructuring would have changed the status of certain subsidiaries of the utility to a status which can be called "sisters" (a subsidiary of a holding company of which the utility also is a co-equal subsidiary), which are not, under Section 62-3-3A NMSA 1978, included within the definition of an "affiliated interest." Therefore, this holding company structure would have prevented the commission's access, under Section 62-6-17 NMSA 1978,

to the books and records of the "sister" necessary to ensure the reasonableness of transactions between that "sister" and the utility. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1987-NMSC-124, 106 N.M. 622, 747 P.2d 917.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For 1984-88 survey of New Mexico administrative law, see 19 N.M.L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 236.

Service of government as excuse for failure of carrier to discharge duty to individual, 8 A.L.R. 162.

Right of public utility company to discontinue its entire service, 11 A.L.R. 252.

Statutory requirement of adequate service and facilities by public utility as affecting liability for loss of private property through inadequate supply of water to extinguish fire, 27 A.L.R. 1279.

Public service commission's power to require extension of gas service into new territory, 31 A.L.R. 333.

Duty of public utility to duplicate service, 52 A.L.R. 1111.

Validity of contract which impairs or tends to impair the ability of a public service corporation to serve the public, 58 A.L.R. 804.

Constitutionality of statute or ordinance requiring public utility to supply fixtures or accessories or incidental service to customers free of charge or for fixed charge, 115 A.L.R. 1162.

Special requirements of consumer as giving rise to implied contract by public utility to furnish particular amount of electricity, gas or water, 13 A.L.R.2d 1233.

73B C.J.S. Public Utilities § 73.

62-6-20. Meter accuracy.

The commission may prescribe reasonable rules, regulations and standards to secure the substantial accuracy of all meters and other devices for measurement of utility service or products which shall be complied with by the utility and consumer.

History: Laws 1941, ch. 84, § 32; 1941 Comp., § 72-520; 1953 Comp., § 68-5-20; Laws 1965, ch. 289, § 5.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8,

amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-21. Inspection of meters and other devices for measuring public utility service.

The commission shall adopt rules, regulations and standards to secure the accuracy of all meters and other devices for measurement of utility service or products, and the commission may examine and test any and all such meters and other devices under such rules and regulations as it may prescribe. At all inspections and tests made on complaints of consumers, representatives of the utility complained of and of the complainant may be present.

History: Laws 1941, ch. 84, § 33; 1941 Comp., § 72-521; 1953 Comp., § 68-5-21; Laws 1965, ch. 289, § 6.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of

Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v.*

N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-22. Meters and other measuring devices; testing; fees.

Any consumer or user may have any meter or measuring device tested by the utility once without charge after a reasonable period to be fixed by the commission by rule, and at shorter intervals upon payment of reasonable fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for other examining and testing [of] such meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the commission since the last such test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of his request shall be refunded to the consumer or user if the meter or measuring device be found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the commission since the last such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

History: Laws 1941, ch. 84, § 34; 1941 Comp., § 72-522; 1953 Comp., § 68-5-22; Laws 1965, ch. 289, § 7.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1,

Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-6-23. Authority to enter premises.

The commission and its officers and employees of the commission may during all reasonable hours, after reasonable notice to the utility, enter upon any premises occupied by any utility for the purpose of making examinations and tests and exercising any power provided for in this act, and may set up and use on such premises any apparatus and appliances necessary therefor. Such public utility shall have the right to be represented at the making of such examination, tests and inspections, and shall be given sufficient time before the making thereof to secure the presence of a representative of its selection.

History: Laws 1941, ch. 84, § 35; 1941 Comp., § 72-523; 1953 Comp., § 68-5-23.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M.

224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

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Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 14, 75.

62-6-24. Safety rules and regulations.

The commission shall have the right and is hereby empowered to adopt, promulgate and enforce such reasonable rules and regulations as may be required to protect users of gas or electricity from damage to their persons or property through the use of defective gas or electrical appliances or

equipment, or improper installation thereof; and to require discontinuance by a consumer of the use of any defective appliance or equipment or the removal forthwith of any unsafe condition incident to the distribution of gas or electricity.

History: Laws 1941, ch. 84, § 36; 1941 Comp., § 72-524; 1953 Comp., § 68-5-24.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

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Commission's general jurisdiction includes safety regulations and inspections. — The general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations includes the power to make safety regulations and enforce them through inspections. 1972 Op. Att'y Gen. No. 72-35.

Commission may delegate its authority to inspect. — The commission is authorized by Section 62-6-4 NMSA 1978 and by the common law to delegate its authority to inspect and test liquefied petroleum gas utilities to the liquefied petroleum gas commission. Only the public service commission (now public regulation commission) can promulgate safety regulations, however, and it must make the final order regarding any violations of regulations. 1972 Op. Att'y Gen. No. 72-35.

Rules and regulations have force of law. — The rules and regulations of the commission duly adopted under Section 62-6-4 NMSA 1978 and this section have the

force and effect of law which a utility must obey. 1969 Op. Att'y Gen. No. 69-81.

It is the commission's duty to protect not only the utility but also its patrons. 1969 Op. Att'y Gen. No. 69-81.

Utility must refuse service to customer with defective wiring. — A utility has a positive duty to refuse service to a customer whose wiring is known by the utility to be in a dangerous or defective condition. 1969 Op. Att'y Gen. No. 69-81.

Compliance with rules excuses discontinuance of service under hazardous conditions. — Compliance with rules of the commission permitting a public utility to immediately discontinue service in the event of a condition determined by the utility to be hazardous would be a defense to a criminal action upon a refusal to render electric service, but the burden would be upon the utility to produce some evidence that the condition was actually hazardous if the criminal action was brought against it, and to prove the existence of the rule itself. 1969 Op. Att'y Gen. No. 69-81.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of public service corporation to prescribe fixtures to be used in connection with its service, 37 A.L.R. 1367.

Duty of gas company as regards precautions to be taken upon or after discontinuing service to premises, 13 A.L.R.2d 1396.

Water distributor's liability for injury due to condition of service lines, meters and the like, which serve individual consumer, 20 A.L.R.3d 1363.

Liability in connection with fire or explosion incident to bulk storage, transportation, delivery, loading or unloading of petroleum products, 32 A.L.R.3d 1169.

62-6-25. Electrical power grids reports; transmission of electrical power; complaint procedures.

A. The commission may require electric utilities and rural electric cooperatives to furnish the commission with available information material to the reliability of electrical power grids within the state.

B. To ensure efficient and reliable operation of New Mexico electrical power grids and upon complaint of an interested electric utility or rural electric cooperative, and after notice and hearing, the commission may, to the extent permitted by federal law and consistent with the standards prescribed by law for compulsory wheeling service ordered by the federal energy regulatory commission, require another electric utility to provide transmission services to the complainant, subject to arrangements for compensation therefor by agreement between the utilities or pursuant to a rate schedule filed with the federal energy regulatory commission.

History: 1978 Comp., § 62-6-25, enacted by Laws 1983, ch. 104, § 1.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a

repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Severability. — Laws 1983, ch. 104, § 2 provided for the severability of the act if any part or application thereof is held invalid.

ANNOTATIONS

"Interested electric utility". — The definition of "person" in Section 62-3-3E NMSA 1978 controls the meaning of "interested electric utility" in Subsection B of this section and, thus, a municipality that had not elected to come

within the terms of the Public Utility Act was not authorized to seek wheeling orders from the commission. *Public Serv. Co. v. N.M. Pub. Util. Comm'n*, 1999-NMSC-040, 128 N.M. 309, 992 P.2d 860.

62-6-26. Economic development rates for gas and electric utilities; authorization.

A. The commission may approve or otherwise allow to become effective, as provided in Subsection B of this section, applications from utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978, as appropriate, for special rates or tariffs in order to prevent the loss of customers, to encourage customers to expand present facilities and operations in New Mexico and to attract new customers where necessary or appropriate to promote economic development in New Mexico. Any such special rates or tariffs shall be designed so as to recover at least the incremental cost of providing service to such customers.

B. The commission may approve or otherwise allow to become effective applications from utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 and filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978 for economic development rates and rates designed to retain load for gas and electric utility customers. For purposes of this section and Section 62-8-6 NMSA 1978, economic development rates and rates designed to retain load are rates set at a level lower than the corresponding service rate for which a customer would otherwise qualify.

C. Except as provided in Subsection D of this section, economic development rates shall be approved or otherwise allowed to become effective for an electric utility or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978 only when the utility or the substantially full requirements supplier of the utility has excess capacity. For purposes of this section, "excess capacity" means the amount of electric generating and purchased power capacity available to the utility or such supplier that is greater than the utility's or such supplier's peak load plus a fixed percentage reserve margin set by the commission.

D. Economic development rates may be approved or otherwise allowed to become effective for electric utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978 that do not meet the qualifications of Subsection C of this section; provided that the following conditions are met:

(1) economic development rates approved under this subsection shall not be lower than the incremental cost of providing service to the economic development rate customer as determined by the commission. As used in this subsection, "economic development rate customer" means a customer that directly benefits from the economic development rate established pursuant to this subsection; and

(2) an economic development rate approved for any customer under this subsection shall last no longer than four years, except that the commission may approve the rate for up to twelve additional months if it finds that the additional period is necessary to attract a particular economic development rate customer to New Mexico.

E. For purposes of this section, "incremental cost" at a minimum shall include all additional costs incurred to serve the economic development rate customer that would not otherwise have been incurred to serve other customers, fuel and purchased power costs, costs recoverable from customers pursuant to the Renewable Energy Act and the Efficient Use of Energy Act and the direct costs of facilities necessary to provide service to the customer. The commission shall not impute to the electric utility revenues that would have been received from the economic development rate or load retention customer if they had been provided service under the corresponding rate for which they would have otherwise qualified.

History: Laws 1989, ch. 5, § 1; 1993, ch. 282, § 31; 2015, ch. 72, § 1.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of

Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2015 amendment, effective June 19, 2015, amended the Public Utility Act to provide for economic

development rates no lower than the incremental cost of providing service; in Subsection A, after "utilities pursuant to", deleted "Subsection F of"; in Subsection B, after "utilities pursuant to", deleted "Subsection F of"; in Subsection C, added "Except as provided in Subsection D of this section", and after "utilities pursuant to", deleted "Subsection F of"; and added Subsections D and E.

The 1993 amendment, effective June 18, 1993, substituted "The commission" for "The New Mexico public service commission" at the beginning of Subsections A and B; and, in Subsection C, in the second sentence, deleted "and Section 62-8-6 NMSA 1978" preceding "excess capacity", substituted "the commission" for "the New Mexico public service commission", and made a stylistic change.

62-6-26.1. Rates for clean fuels used as vehicular fuels; authorization.

The commission may approve or otherwise allow to become effective applications from public utilities, subject to the commission's jurisdiction under the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], for clean fuel rates, tariffs or other programs in order to encourage, develop or promote the development and use of natural gas and other clean fuels used as vehicular fuels. For the purposes of this section, clean fuel rates or tariffs are rates or tariffs set at a lower level than the corresponding service rate or tariff for which a customer would otherwise qualify.

History: Laws 1992, ch. 58, § 10; 1993, ch. 282, § 32.

Compiler's notes. — Sections 62-6-4 to 62-6-26.1 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v.*

N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, substituted "The commission" for "The New Mexico public service commission" at the beginning of the section.

62-6-27. Repealed.

Repeals. — Laws 1997, ch. 28, § 1 repealed 62-6-27, as enacted by Laws 1994, ch. 141, § 1, relating to gasoline sales information, effective June 20, 1997. For provisions

of former section, see the 1996 NMSA 1978 on *NMOneSource.com*.

62-6-28. Clean energy investments; authorization; department of environment certification.

A. The commission shall adopt rules to allow public utilities a reasonable opportunity to recover costs incurred by a public utility for the development and ongoing construction of a clean energy project. Such costs must not exceed the level authorized by the commission in a proceeding to establish a reasonable level of expenditure that the public utility may undertake to develop and construct a clean energy project. The public utility shall recover approved costs reasonably incurred up to the time it files a general rate case whether or not the project is in service. This section does not relieve a public utility of its duty to act reasonably and prudently as circumstances indicate once development and construction of a clean energy project begins.

B. A public utility that incurs costs to reduce harmful air emissions at new or existing power plants may seek recovery of those costs in a general rate case, regardless of whether the technology or method used qualifies as a clean energy project or advanced coal technology. If a public utility seeks cost recovery for expenditures to reduce harmful air emissions beyond levels required by law or rule, the commission may find that such expenditures are reasonable.

C. The commission, upon petition or its own motion, shall open a docket to consider appropriate performance-based financial or other incentives to encourage public utilities to develop and construct clean energy projects.

D. As used in this section:

(1) "advanced coal technology" means new coal-based generation, coal gasification or other technology using coal as a fuel source that is certified by the department of environment to meet the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent or more of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions such that by the later of January 1, 2017, or eighteen months after the commercial operation date, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017, or eighteen months after the commercial operation date of the qualified generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the facility; and

(f) does not exceed seven hundred net megawatts nameplate capacity;

(2) "clean energy project" means the construction or modification of a new or existing electric generation facility in a manner that employs a technology that has additional financial risk because it is not commercially established or because it employs an established technology that is not commercially proven under the altitude, geographic or resource availability conditions under which it is proposed to operate and may include associated renewable energy storage facilities, recycled energy and, for the limited purposes of this section, advanced coal technology, or other technology as deemed appropriate by the commission; a "clean energy project" shall achieve emission levels no greater than those specified for advanced coal technology and shall not include nuclear power;

(3) "development" means the study, plan, design, site, permit, engineering, assessment and determination of the economic and operational feasibility at one or more locations and may include small-scale demonstration projects, if approved by the commission, as a reasonable expenditure;

(4) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from exhaust stacks or pipes to electricity without combustion of additional fossil fuel; and

(5) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coalbed methane or natural gas recovery techniques.

E The department of environment may issue rules governing the procedure for administering the certification provisions of this section.

History: Laws 2007, ch. 229, § 2.

Effective dates. — Laws 2007, ch. 229, § 3 made this section effective July 1, 2007.

ARTICLE 7

Natural Gas Price Protection

(Repealed by Laws 1984, ch. 123, § 13A and terminated by Laws 1984, ch. 123, § 15.)

62-7-1 to 62-7-10. Repealed.

Repeals. — Laws 1984, ch. 123, § 13A, repealed 62-7-1 through 62-7-10 NMSA 1978; the Natural Gas Pricing Act, effective July 1, 1984.

62-7-11 to 62-7-23. Terminated.

Termination dates. — Laws 1984, ch. 123, § 15, terminated 62-7-11 to 62-7-23 NMSA 1978, as enacted by Laws

1984, ch. 123, the Natural Gas Price Protection Act, effective June 30, 1985.

ARTICLE 8

Duties and Restrictions Imposed Upon Public Utilities

Sec.

62-8-1. Rates.

62-8-2. Service.

62-8-3. Schedules.

62-8-4. Schedules to show classifications.

62-8-5. Adherence to schedules.

62-8-6. Discrimination.

62-8-7. Change in rates.

62-8-7.1. Hearing procedures for change of rates of small water and sewer utilities.

Sec.

62-8-8. Inspection and supervision fee.

62-8-9. Disposition of funds; interest and penalty on late payments.

62-8-10. Utility service; seriously ill individuals.

62-8-11. Consumer information; disclosure prohibited.

62-8-12. Applications to expand transportation electrification.

62-8-13. Application for grid modernization projects.

62-8-1. Rates.

Every rate made, demanded or received by any public utility shall be just and reasonable.

History: Laws 1941, ch. 84, § 37; 1941 Comp., § 72-601; 1953 Comp., § 68-6-1.

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For commission jurisdiction over rates, *see* 62-6-4 NMSA 1978 and notes thereto.

For commission jurisdiction over water and sanitation district rates, *see* 73-21-16 L NMSA 1978.

ANNOTATIONS

Balancing of interests required. — To set a just and reasonable rate, the commission must balance the investor's interest against the ratepayer's interest. *In re Timeron Water Co.*, 1992-NMSC-047, 114 N.M. 154, 836 P.2d 73.

Rate requests carried out under Section 62-8-7 NMSA 1978. — Section 62-8-7 NMSA 1978 is the provision under which the overall purpose of this section is carried out for the given instance of a rate request. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Commission not limited in method of valuating utility or setting rates. — Neither New Mexico case law nor the Public Utility Act imposes any one particular method of valuation upon the commission in ascertaining the rate base of a utility; nor does the spirit of the statute tie the commission down to the consideration of a single factor in establishing rates. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

As commission is vested with considerable discretion in determining whether a rate to be received and

charged is just and reasonable. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Commission's remedy for utility's imprudent decision was reasonable. — Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), and where the commission found that PNM's decisions were imprudent on the basis that PNM had failed to demonstrate that it considered alternative courses of action, the commission's remedy of disallowing recovery for the amount PNM paid for the 64.1 MW over the net book value of that capacity and allowing PNM to recover the costs of the five renewed leases was reasonable and lawful. The commission established valuations for the 64.1 MW and the renewed lease, which it considered appropriate to protect ratepayers and result in just and reasonable rates, and such an approach is a lawful and reasonable exercise of the commission's authority to determine the rate base of a utility and its obligation to ensure that rates are just and reasonable. It was reasonable and lawful for the commission to conclude that a total disallowance was not justified. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Commission did not exceed its authority in denying utility's recovery for costs. — Where PNM appealed the New Mexico public regulation commission's (commission) decision to deny it recovery for the costs of converting certain San Juan generating station units to a balanced draft system, which is designed to reduce fugitive emissions, on the grounds that PNM had failed to demonstrate that these costs were prudently incurred, the commission was within its authority in denying recovery, because the commission's finding that balanced draft was included in the permits for San Juan at PNM's request and not because it was required by the applicable environmental regulation was a finding specifically concerning the reasonableness of costs PNM was seeking to include in its rate base and was squarely within the authority of the commission to regulate the rates of public utilities and the obligation of the commission to ensure that those

rates are just and reasonable. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Discretion to review rates efficiently. — The statutory scheme vests broad discretion in the commission to review utility rates in an efficient and reasonable manner. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Assignment of issue to separate proceeding. — The commission may assign an issue raised in a rate request hearing to a separate proceeding. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

If plant acquisition adjustment is included as legitimate plant cost, it becomes a part of the rate base upon which a rate of return is to be computed. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Ordering increase in contract rate is within commission's jurisdiction. — Where the commission had entered an order authorizing a public utility to enter into a contract and to continue to charge the gas rate therein specified until further order and on the ex parte petition of the utility subsequently entered an interlocutory order making a rate increase to be effective until the commission could hold a hearing to determine and set a new and proper rate, the commission was moving strictly in conformity with the act creating it to determine one of the major questions submitted to its jurisdiction — a question of rates. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Burden of proof on utility. — The legislature has granted the commission discretion to place the burden of proof on the utility in any rate proceeding. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

62-8-2. Service.

Every public utility shall furnish adequate, efficient and reasonable service.

History: Laws 1941, ch. 84, § 38; 1941 Comp., § 72-602; 1953 Comp., § 68-6-2.

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For jurisdiction of commission over service by public utility, see 62-6-4 and 62-6-19 to 62-6-22 NMSA 1978.

For denial of service by utility being petty misdemeanor, see 30-13-2 NMSA 1978.

ANNOTATIONS

Term "reasonable" imports a standard of reasonable care requiring the presence of fault as a prerequisite to liability. *Rossin v. S. Union Gas Co.*, 472 F.2d 707 (10th Cir. 1973).

Standard of care for power company. — A power company engaged in distributing electric current over its wires to consumers is not an insurer of the safety of

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 79 to 87.

Judicial relief from contract rates which have become inadequate, 6 A.L.R. 1659, 10 A.L.R. 1335.

Validity, construction and effect of provisions for the appropriation of excess income of public utility, 33 A.L.R. 488.

Variations of electric utility rates based on quantity used, 67 A.L.R. 821.

Right of public utility to make minimum monthly bill or fixed monthly service charge, 122 A.L.R. 193.

Discrimination between property within and that outside governmental districts as to public service or utility rates, 4 A.L.R.2d 595.

Special requirements of consumer as giving rise to liability, based on implied contract, for failure to furnish particular amount of electricity, gas or water, 13 A.L.R.2d 1233.

Variations of utility rates based on flat and meter rates, 40 A.L.R.2d 1331.

Amount paid by public utility to affiliate for goods or services as includible in utility's rate base and operating expenses in rate proceeding, 16 A.L.R.4th 454.

Public utilities: validity of preferential rates for elderly or low-income persons, 29 A.L.R.4th 615.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

73B C.J.S. Public Utilities §§ 15 to 59.

the consumer or anyone else, although the company must exercise a high degree of care to protect those likely to come in contact with its wires. The care required is that commensurate with the dangerous character of the business and consistent with its practical operation and extends not only to the erection, maintenance and operation of the company's plant and apparatus, but also to an inspection thereof and to the discovery of defects. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Duty to furnish service is imposed by law. — The duty of a public utility to furnish adequate, efficient and reasonable service is imposed by law, separate and apart from any contractual obligation to its consumers and entirely apart from any pertinent matters filed with the commission. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

A public utility's obligation to provide adequate, efficient and reasonable service is statutory and not contractual and there is no obligation that provides for a utility to continue electrical service to a customer for an indefinite term at a set rate. *Gonzales v. Public Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

Commission cannot relieve utility of liability for negligence. — The authority of the commission is sufficiently broad to empower it to establish rules and regulations for the government of the utility in the prosecution of its business, but such public service commission (now public regulation commission) cannot relieve a utility

from liability under the law of negligence by any rule it may adopt. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Utility cannot contract against its negligence.

— A public service corporation, or a public utility such as an electric company, cannot contract against its negligence in the regular course of its business or in performing one of its duties of public service or where a public duty is owed or where public interest is involved. *Southwestern Pub. Serv. Co. v. Artesia Alfalfa Growers' Ass'n*, 1960-NMSC-052, 67 N.M. 108, 353 P.2d 62.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 6, 16.

Right of public utility company to discontinue its entire service, 11 A.L.R. 252.

Liability of one maintaining high tension electric wires over private property of another for injuries thereby inflicted, 14 A.L.R. 1023, 56 A.L.R. 1021.

Right to string electrical wires across railroad right-of-way, 18 A.L.R. 619.

Validity of service charge for gas meter, 20 A.L.R. 225, 122 A.L.R. 194.

Implied obligation with respect to character or extent of service by gas company, 21 A.L.R. 671.

Electric light plant as nuisance, 23 A.L.R. 1410, 90 A.L.R. 1207.

Gas company's liability for injury or damage by escaping gas, 25 A.L.R. 262, 29 A.L.R. 1250, 47 A.L.R. 488, 90 A.L.R. 1082, 138 A.L.R. 870.

Injunction against anticipated or threatened nuisance from storage of gas, 26 A.L.R. 948, 32 A.L.R. 724, 55 A.L.R. 880.

Statutory requirement of adequate service and facilities by public utility as affecting liability for loss of private property through inadequate supply of water to extinguish fire, 27 A.L.R. 1279.

Right of company to prescribe fixtures to be used in connection with service, 37 A.L.R. 1368.

Duty of company to instruct patron as to economical manner of using service or give him equivalent concession, 38 A.L.R. 1065.

Duty of public utility to notify patron in advance of temporary suspension of service, 52 A.L.R. 1078.

Duty of public utility to duplicate service, 52 A.L.R. 1111.

Right of public utility corporation to refuse its service because of collateral matter not related to that service, 55 A.L.R. 771.

Cost involved as affecting duty to extend electrical service or supply individual applicant, 58 A.L.R. 537.

Mandamus to compel service by electric company, 83 A.L.R. 950.

Duty and liability in respect of sagging electrical wires maintained over highway, 84 A.L.R. 690.

Liability of utility company for delay in commencing service, 97 A.L.R. 838.

Construction of contract regarding time of payment for public utility service, 97 A.L.R. 982.

Damages for breach of duty to furnish electricity, 108 A.L.R. 1192.

Municipal corporation's power to sell meters to consumers as adjunct of services furnished, 108 A.L.R. 1459.

Right of utility on expiration of street franchise by limitation to discontinue service, 112 A.L.R. 631.

Constitutionality of statute or ordinance requiring public utility to supply fixtures or accessories or incidental service to customers free of charge or for fixed charge, 115 A.L.R. 1162.

Validity of contract for exemption of public service company from liability for own negligence, 175 A.L.R. 38.

Right of public utility to discontinue line or branch on ground that it is unprofitable, 10 A.L.R. 2d 1121.

Deposit required by public utility, 43 A.L.R. 2d 1262.

Liability of electric light or power company to patron for interruption, failure or inadequacy of power, 4 A.L.R. 3d 594.

Payment of charge as condition of further service, 19 A.L.R. 3d 1227.

Water distributor's liability for injury due to condition of service lines, meters and the like which serve individual consumer, 20 A.L.R. 3d 1363.

Racial or religious discrimination in furnishing of public utility services or facilities, 53 A.L.R. 3d 1027.

Liability of one other than electric power or light company or its employee for interruption, failure, or inadequacy of electric power, 15 A.L.R. 4th 1148.

Liability of electric utility to nonpatron for interruption or failure of power, 54 A.L.R. 4th 667.

Liability of electric company to one other than employee for injury or death arising from commencement or resumption of service, 46 A.L.R. 5th 423.

Liability of municipal corporation or electric utility for injury resulting from inoperative, malfunctioning, or otherwise defective street light, 111 A.L.R. 5th 579.

Debtor's protection under 11 USC § 366 against utility service cutoff, 83 A.L.R. Fed. 207.

73B C.J.S. Public Utilities § 73.

62-8-3. Schedules.

Under such rules and regulations as the commission may prescribe, every public utility subject to the jurisdiction of the commission, shall file with the commission, within such time and in such form as the commission may designate, schedules showing all rates established by it and collected or enforced, or to be collected or enforced, within the jurisdiction of the commission. The utility shall keep a copy of such schedules open to public inspection under such rules and regulations as the commission may prescribe.

History: Laws 1941, ch. 84, § 39; 1941 Comp., § 72-603; 1953 Comp., § 68-8-3.

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't*

of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Fee payable for each schedule, not each instrument. — Fee provided for is payable for each rate

schedule filed even though all schedules filed under rules of the commission may be included in one instrument. 1941-42 Op. Att'y Gen. No. 41-3939.

Law reviews. — For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 5, 29, 41, 59.

62-8-4. Schedules to show classifications.

Such schedules filed by every public utility shall set forth the classification of users and the rates to be charged as to each classification; and every utility shall have the right to make reasonable classifications of its users.

History: Laws 1941, ch. 84, § 40; 1941 Comp., § 72-604; 1953 Comp., § 68-6-4.

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however,

that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Refund to wholesale users held not discriminatory. — There was no de facto discrimination where electric company gave refund to wholesale users and did not give it to small consumers who did not have contracts with the power company. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 117 to 125.

Public utilities: validity of preferential rates for elderly or low-income persons, 29 A.L.R.4th 615.

62-8-5. Adherence to schedules.

No public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this act, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed in such schedules.

History: Laws 1941, ch. 84, § 41; 1941 Comp., § 72-605; 1953 Comp., § 68-6-5.

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't*

of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

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Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 5, 56.

62-8-6. Discrimination.

No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No public utility shall establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service. Nothing shall prohibit, however, the commission from approving economic development rates and rates designed to retain load or from approving energy efficiency programs designed to reduce the burden of energy costs on low-income customers pursuant to the Efficient Use of Energy Act [Chapter 62, Article 17 NMSA 1978].

History: Laws 1941, ch. 84, § 42; 1941 Comp., § 72-606; 1953 Comp., § 68-6-6; Laws 1989, ch. 5, § 2; 1993, ch. 282, § 33; 2008, ch. 24, § 2.

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of

Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an

amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For denial of service by utility being petty misdemeanor, see 30-13-2 NMSA 1978.

The 2008 amendment, effective May 14, 2008, authorized the commission to approve energy efficiency programs to reduce the burden of energy costs on low-income customers.

The 1993 amendment, effective June 18, 1993, substituted "the commission" for "the New Mexico public service commission" in the last sentence.

The 1989 amendment, effective June 16, 1989, added the last sentence.

ANNOTATIONS

Cost recovery based on a uniform per kilowatt hour basis. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public regulation commission approved a fuel and purchased power cost adjustment clause that permitted the public utility to recover its fuel and purchased power costs through a uniform per kilowatt hour charge; the public utility's expert witness testified that the proposed fuel and purchased power cost adjustment clause fairly apportioned cost recovery across different rate classes; the commission had a long standing policy that required fuel and purchased power costs to be recovered on a uniform per kilowatt basis; and the policy was reflected in a rule promulgated by the commission, emergency fuel and purchased power cost adjustment clause was supported by substantial evidence. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Discrimination in rates or service is prohibited. — This section prohibits any unreasonable preference or advantage to any corporation or person as to rates or service. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Tariff permitting utility to recover costs of relocation required by a local ordinance did not impermissibly assess different rates for different communities in violation of this section. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

Refund to wholesale users held not discriminatory. — There was no de facto discrimination where electric company gave refund to wholesale users and did not give it to small consumers who did not have contracts

with power company. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Ordering change in contract rate is within commission's jurisdiction. — Where the commission had entered an order authorizing a public utility to enter into a contract and to continue to charge the gas rate therein specified until further order and on the ex parte petition of the utility subsequently entered an interlocutory order making a rate increase to be effective until the commission could hold a hearing to determine and set a new and proper rate, the commission was moving strictly in conformity with the act creating it to determine one of the major questions submitted to its jurisdiction - a question of rates. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Variation between rates of different utilities is not discrimination within the meaning of this section. *Gonzales v. Public Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

Contract on behalf of municipal inhabitants allowed. — This section does not prohibit variations in rates, nor does it require "equal service." Rather, it prohibits "unreasonable differences" in rates of service between localities. Allowing municipalities to contract with utilities for service rates to their inhabitants does not, therefore, ipso facto, violate this section. *City of Albuquerque v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-021, 115 N.M. 521, 854 P.2d 348.

Law reviews. — For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979).

For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 38 to 42; 110 to 116.

Franchise provisions for free or reduced rates of public service corporations as within constitutional or statutory provision prohibiting discrimination, 10 A.L.R. 504, 15 A.L.R. 1200.

Right to discriminate against a concern which desires service for resale, 12 A.L.R. 327, 112 A.L.R. 773.

Discrimination by public utility in respect of extension of credit, 12 A.L.R. 964.

Discrimination in operation of municipal utility, 50 A.L.R. 126.

Discrimination between property within and that outside governmental districts as to public service or utility rates, 4 A.L.R.2d 595.

Deposit required by public utility, 43 A.L.R.2d 1262.

Racial or religious discrimination in furnishing of public utility services or facilities, 53 A.L.R.3d 1027.

73B C.J.S. Public Utilities § 43.

62-8-7. Change in rates.

A. At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.

B. Unless the commission otherwise orders, no public utility shall make any change in any rate that has been duly established except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect and other information as the commission by rule requires. The utility shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty days' notice, under conditions that it may prescribe.

C. Whenever there is filed with the commission by any public utility a complete application as prescribed by commission rule proposing new rates, the commission may, upon complaint or upon its own initiative, except as otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates. If the commission determines a hearing is necessary, it shall suspend the operation of the proposed rates before they become effective but not for a longer initial period than nine months beyond the time when the rates would otherwise go into effect, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months. The commission shall hear and decide cases with reasonable promptness. The commission shall adopt rules identifying criteria for various rate and tariff filings to be eligible for suspension periods shorter than what is allowed by this subsection and to be eligible for summary approval without hearing.

D. If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the utility for the service in question and shall fix the rates by order to be served upon the utility or the commission by its order shall direct the utility to file new rates respecting such service that are designed to produce annual revenues no greater than those determined by the commission in its order to be just and reasonable. Those rates shall thereafter be observed until changed, as provided by the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978].

E. Except as otherwise provided by law, any increase in rates or charges for the utility commodity based upon cost factors other than taxes or cost of fuel, gas or purchased power, filed for after April 4, 1991, shall be permitted only after notice and hearing as provided by this section. The commission shall enact rules governing the use of tax, fuel, gas or purchased power adjustment clauses by utilities that enable the commission to consider periodically at least the following:

- (1) whether the existence of a particular adjustment clause is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes;

- (2) the specific adjustment mechanism to recover tax, gas, fuel or purchased power costs;

- (3) which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may be determined by the commission in a timely manner, including what informational filings are required to enable the commission to make such a determination; and

- (4) the proper adjustment period to be employed.

F. Except as otherwise provided by law, any increase in rates or charges for a public utility as defined in Paragraph (3) of Subsection G of Section 62-3-3 NMSA 1978 based upon cost factors other than taxes or cost of fuel, gas, purchased power or acquisition of water resources shall be permitted only after notice and hearing as provided by this section. For the purposes of this subsection, "acquisition of water resources" does not include the purchase or other permanent acquisition of water rights. The commission shall enact rules governing the use of tax, fuel, gas, purchased power or water resource acquisition adjustment clauses by such utilities that enable the commission to consider periodically at least the following:

- (1) whether the existence of a particular adjustment clause is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes;

- (2) the specific adjustment mechanism to recover tax, gas, fuel, purchased power or acquisition of water resource costs;

- (3) which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may be determined by the commission in a timely manner, including what informational filings are required to enable the commission to make such a determination; and

- (4) the proper adjustment period to be employed.

G. The commission may eliminate or condition a particular adjustment clause if it finds such elimination or condition is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all

customer classes; provided, however, that no such elimination or condition shall be ordered unless such elimination or condition will not place the affected utility at a competitive disadvantage. The commission rules shall also provide for variances and may provide for separate examination of a utility's adjustment clause based upon that utility's particular operating characteristics.

H. Whenever there is filed with the commission a schedule proposing new rates by a rural electric cooperative organized under the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978] or by a foreign distribution cooperative, the rates shall become effective as proposed by the rural electric cooperative or the foreign distribution cooperative without a hearing, except as provided in this subsection. The rural electric cooperative or the foreign distribution cooperative shall give written notice of the proposed rates to its affected patrons in New Mexico at least thirty days prior to the filing with the commission. Upon the filing with the commission of a protest setting forth grounds for review of the proposed rates signed by the lesser of one percent of or twenty-five members of a customer rate class of the rural electric cooperative or foreign distribution cooperative and if the commission determines that there is just cause for reviewing the proposed rates on one or more of the grounds of the protest, the commission shall suspend the rates and conduct a hearing concerning the reasonableness of any proposed rates filed by a rural electric cooperative or a foreign distribution cooperative pursuant to Subsections C and D of this section. The protest shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. The hearing and review shall be limited to the issues set forth in the protest and for which the commission may find just cause for the review, which issues shall be contained in the notice of hearing. The provisions of this subsection shall not be construed to affect commission authority or procedure to regulate the sale, furnishing or delivery by wholesale suppliers of electricity to rural electric cooperatives or foreign distribution cooperatives pursuant to Section 62-6-4 NMSA 1978. In addition to the adjustments permitted by Subsections E and G of this section, the commission may authorize rate schedules of rural electric cooperatives and foreign distribution cooperatives to recover, without notice and hearing, changes in the cost of debt capital incurred pursuant to securities that are lawfully issued. This subsection shall not apply to any foreign distribution cooperative that proposes rates for any of its customer rate classes in the state that are higher than the rates it charges to the same or substantially similar customer rate class in the state under the laws of which the foreign distribution cooperative is organized. For the purposes of this subsection:

(1) "foreign distribution cooperative" means a rural electric distribution cooperative corporation serving its members at retail and transacting business in New Mexico pursuant to the authority granted under Section 62-15-26 NMSA 1978;

(2) "member of a foreign distribution cooperative" means a retail customer in New Mexico serviced by a foreign distribution cooperative; and

(3) "member of a rural electric cooperative" means a member as defined by the Rural Electric Cooperative Act.

History: 1978 Comp., § 62-8-7, enacted by Laws 1991, ch. 251, § 1; 1998, ch. 108, § 48; 2003, ch. 416, § 4; 2007, ch. 186, § 1; 2011, ch. 155, § 1; 2011, ch. 170, § 1.

Repeals and reenactments. — Laws 1991, ch. 251, § 1 repealed former 62-8-7 NMSA 1978, as amended by Laws 1985, ch. 221, § 2, relating to change in rates, and enacted the above section, effective April 4, 1991.

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

2011 Multiple Amendments. — Laws 2011, ch. 155, § 1 and 2011, ch. 170, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, 2011, ch. 170, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2011, ch. 155, § 1 and 2011, ch. 170, § 1 are described below. To view the session laws in their entirety, see the 2011 session laws on NMSources.com.

Laws 2011, ch. 170, § 1, effective July 1, 2011, in Subsection G, permitted foreign distribution cooperatives to increase rates, without a hearing, if the proposed rates are not higher than the rates the cooperative charged in the state in which it is organized; permitted the commission to suspend the cooperative's rates if there is a protest by the specified number of customers; and added definitions of "foreign distribution cooperative" and "member of a foreign distribution cooperative".

Laws 2011, ch. 155, § 1, effective July 1, 2011, added Subsection F to permit water utilities to increase rates,

without notice and hearing, based on taxes, the cost of fuel, gas and purchased power, and the cost to purchase or acquire permanent water rights.

The 2007 amendment, effective July 1, 2007, in Subsection G, required that a petition for hearing be signed by the lesser of one percent or twenty-five members of a customer class.

The 2003 amendment, effective July 1, 2003, substituted "that are lawfully issued" for "the issuance of which are approved by the commission" following "pursuant to securities" in Subsection G.

The 1998 amendment, effective January 1, 1999, deleted "as provided in this section" near the beginning of Subsection A; in Subsection B, substituted "that" for "which" at the beginning and inserted "and other information as the commission by rule requires" near the middle; rewrote Subsection C; in Subsection E, substituted "April 4, 1991" for "the effective date of this section" near the middle and deleted "and regulations" preceding "shall enact rules" near the end; and added Subsection F, redesignated former Subsection F as Subsection G and made minor stylistic changes in Subsection G.

ANNOTATIONS

Franchise fees are not items included in adjustment clauses. — Franchise fees charged by counties pursuant to Section 62-1-3 NMSA 1978 are not within the jurisdiction of the public regulation commission by analogy to fuel and purchased power adjustment clauses, over which the commission has jurisdiction under Section 62-8-7 NMSA 1978. *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, 149 N.M. 174, 246 P.3d 443.

Denial of due process. — Where PNM appealed the New Mexico public regulation commission's (commission) denial of recovery in its rate base for the repurchase of 64.1 MW of capacity and certain lease renewals at Palo Verde nuclear generating station (Palo Verde), and where the commission found that PNM's actions in renewing and reacquiring the leases exposed ratepayers to costs associated with nuclear decommissioning responsibilities that likely would not have been incurred had an alternative resource other than nuclear been selected and denied recovery for all future nuclear decommissioning costs, the commission denied PNM's right to due process of law, because PNM was not given sufficient notice of a potential permanent disallowance of all recovery for its future contributions to the nuclear decommissioning trusts and was not afforded an opportunity to be heard on the issue. *Public Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012.

Adequate public notice. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public regulation commission published a public notice of the proceedings which stated that the public utility had asked the commission to implement the proposed fuel and purchase power cost clause and to include conditions to mitigate the impact on customer bills during peak periods and incentives to the public utility to control costs, that the public utility contended that it was experiencing serious cash flow problems, that it was at risk of losing its investment grade rating, that it was experiencing a loss of overall financial integrity, and that the lack of a fuel and purchased power cost adjustment clause would result in the downgrading of the public utility's credit rating, and that because of the serious concerns raised by the public utility regarding its imminent financial crisis, the commission had established an expedited procedural schedule for reviewing the emergency fuel and purchased power cost adjustment clause; and the commission subsequently decided that the public utility's financial condition was not relevant to the issue of whether the commission should grant the emergency

fuel and purchased power cost adjustment clause, the notice properly informed the public of the arguments raised in the public utility's application and of the expedited procedural schedule, was not inadequate or misleading, and did not deny the intervenors procedural due process. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Expedited procedural schedule. — Where a public utility applied for a rate increase and a fuel and purchased power cost adjustment clause; a hearing examiner appointed by the public regulation commission issued a recommendation that the application for the fuel and purchased power cost adjustment clause be denied; the public utility then applied for an emergency fuel and purchased power cost adjustment clause; the commission severed the emergency application from the underlying rate case and determined that the commission would take administrative notice of any evidence relevant to the emergency application that was in the underlying rate case; intervenors participated in the underlying rate case; because the public utility contended that it was facing an immediate and critical financial crisis due to the lack of appropriate recovery of rapidly escalating fuel and purchased power costs, the commission established an expedited procedural schedule for reviewing the public utility's application which required the intervenors to file testimony within nine days after notice of the proceeding had been published; and the commission subsequently granted the intervenors two extensions of time which extended the time period in which the intervenors were required to file their responsive testimony from 12 to 42 days, the commission's denial of the intervenors' additional requests for extensions of time was not arbitrary, capricious or unreasonable and did not deny the intervenors procedural due process. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Failure of commissioners to attend public hearings on matters on which they vote. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public regulation commission held public hearings on the public utility's application; two members of the commission who voted in favor of the public utility's application did not personally attend many of the public hearings; and the intervenors did not present any evidence to support their claim that the two commissioners failed to review the evidentiary record prior to voting, the intervenors failed to show they were denied their procedural due process right to a full and fair hearing. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Failure of commissioners to recuse themselves. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public utility contended that it was facing an immediate and critical financial crisis due to the lack of appropriate recovery of rapidly escalating fuel and purchased power costs; at a hearing that was held before the commission held public hearings on the merits of the public utility's application, two commissioners argued that in view of the public utility's financial crisis, the commission should grant the public utility interim relief on its application; the intervenors filed a motion requesting that the two commissioners recuse themselves from participating in the proceeding on the grounds that they had prejudged the merits of the public utility's application; and the two commissioners declined to recuse themselves, the intervenors were not denied their procedural due process right to a fair and impartial hearing. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

To require a utility to offset its fuel and purchased power costs against cost-savings in other areas would undermine the direct and automatic nature of the

cost recovery system inherent in the fuel and purchased power cost adjustment clause authorized by Subsection E of Section 62-8-7 NMSA 1978. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Recovery of costs of prudence review audit.

— Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public regulation commission approved the fuel and purchased power cost adjustment clause and required the public utility to pay the costs of an independent prudence review of its fuel and purchased power costs by auditors selected by and under the direction of the commission; and after issuance of the commission's order approving the fuel and purchased power cost adjustment clause, the commission issued a request for proposals to select a qualified auditor which summarized the scope of the audit and the scope of the prudence review, the independent audit provided for sufficient regulatory oversight. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Filing schedule of rate changes. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public utility notified the public regulation commission of its proposed rate changes in the application; the public was notified of the proposed rate changes when the commission published notice of the proceedings; the commission's final order granting the fuel and purchased power cost adjustment clause required the public utility to file new schedules for the fuel and purchased power cost adjustment clause within five days after the date of the final order; and the public utility filed new schedules six days before the fuel and purchase power cost adjustment clause went into effect, the public utility complied with the substantive requirements of Subsection B of Section 62-8-7 NMSA 1978. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Regulation 17.9.550.17(A)(2) NMAC does not require a showing that fuel and purchased power costs are volatile or fluctuate more than some other cost of providing service. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Substantial evidence supported finding that costs fluctuate and cannot be determined in a rate case.

— Where a public utility applied for an emergency fuel and purchased power cost adjustment clause and the public utility provided testimony that prices for all fuels had increased substantially and had become more volatile compared with past years, fuel and purchased power prices and off system sales were difficult to predict for rate setting purposes, financial markets downgrade the credit rating of public utilities that do not have fuel and purchased power cost adjustment clauses, natural gas will be an increasing percentage of the public utility's fuel base, purchased power agreements will have variable fuel costs based on natural gas prices, natural gas prices have evidenced 50% to 60% price swings, and the public utility's long term contracts for nuclear fuel and coal were not fixed price contracts, the commission's findings that the public utility's fuel and purchased power costs periodically fluctuate and cannot be precisely determined in a rate case were supported by substantial evidence. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Purchased power. — Renewable energy certificates unaccompanied by the purchase of the renewable energy that the certificates represent do not constitute purchased power and the renewable energy certificate costs cannot be recovered through the automatic adjustment clause. *N.M. Indus. Energy Consumers v. N.M. PRC*, 2007-NMSC-053, 142 N.M. 533, 168 P.3d 105.

The commission exceeded its authority when it determined that renewable energy certificates costs were closely related to purchased power and recoverable through the automatic adjustment clause. *N.M. Indus. Energy Consumers v. N.M. PRC*, 2007-NMSC-053, 142 N.M. 533, 168 P.3d 105.

Rate requests carried out under this section. — This section is the provision under which the overall purpose of Section 62-8-1 NMSA 1978 is carried out for the given instance of a rate request. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Commission is vested with considerable discretion in determining whether a rate to be received and charged is just and reasonable. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116.

Discretion to review rates efficiently. — The statutory scheme vests broad discretion in the commission to review utility rates in an efficient and reasonable manner. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Commission may change rates by unilateral action followed by hearing. — This section contains express language conferring power on the commission, by unilateral action, to make a change in rates, providing hearing on what is a fair and reasonable rate follows in due season on proper notice and an opportunity is made for all interested parties to be heard. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Including increase in contract rate. — Where the commission had entered an order authorizing a public utility to enter into a contract and to continue to charge the gas rate therein specified until further order and on the ex parte petition of the utility subsequently entered an interlocutory order making a rate increase to be effective until the commission could hold a hearing to determine and set a new and proper rate, the commission was moving strictly in conformity with the act creating it to determine one of the major questions submitted to its jurisdiction - a question of rates. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Action on rate change not required within nine months. — With respect to rate changes, this section does not make it mandatory for the commission to act within any specific time; it merely provides that if the commission fails to act within the nine-month suspension period, the utility may put the proposed rates into effect. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1979-NMSC-042, 92 N.M. 721, 594 P.2d 1177.

Commission may not order refund passed on to consumers. — Commission has no express or implied statutory authority to order the flow-through of refunds to electric company from power supplier to consumers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Where refund is not trust fund for consumers. — Where refund was ordered paid over to power company by the federal power commission without any restrictions, and there was nothing in the order indicating an intention on the part of the commission to create a "trust fund" for the benefit of the ultimate consumers, the refund did not constitute a trust fund belonging to company's customers. *N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-097, 81 N.M. 683, 472 P.2d 648.

Commission's order held unsupported by substantial evidence. — Where gas company seeking rate increase proposed to trend the general plant account items by using a nationally recognized index, but the commission instead inserted its own method - to simply use the untrended original cost, although the witness who

strongly supported this approach admitted that he did not know whether this would accurately establish the reproduction cost of the items, the court held the commission's order was unreasonable, being unsupported by substantial evidence. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Assignment of issue to separate proceeding. — The commission may assign an issue raised in a rate request hearing to a separate proceeding. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Burden of proof on utility. — The legislature has granted the commission discretion to place the burden of proof on the utility in any rate proceeding. *Otero Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1989-NMSC-033, 108 N.M. 462, 774 P.2d 1050.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For note, "Conservation, Lifeline Rates and Public Utility Regulatory Commissions," see 19 Nat. Res. J. 411 (1979);

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Change of rates by public utility while another rate is undetermined, 16 A.L.R. 1219.

Joinder or representation of several claimants in action to recover overcharge, 1 A.L.R.2d 160.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

73B C.J.S. Public Utilities § 17.

62-8-7.1. Hearing procedures for change of rates of small water and sewer utilities.

A. Whenever there is filed with the commission any schedule proposing any new rates pursuant to Section 62-8-7 NMSA 1978 by any public utility as defined in Paragraph (3) or (5) of Subsection G of Section 62-3-3 NMSA 1978 with equal to or fewer than an aggregate of one thousand five hundred service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, the rates shall become effective as proposed by the utility without a hearing; provided that the utility shall be required to give written notice of the proposed rates to the ratepayers receiving service from the utility at least sixty days prior to filing the proposed rate change with the commission; and provided further that the commission shall enter upon a hearing concerning the reasonableness of any proposed rates filed by such a utility pursuant to Subsections C and D of Section 62-8-7 NMSA 1978 when a rate increase would have the effect of increasing the rates fifty percent or more in a twelve-month period or upon the filing with the commission of a protest seeking review of the proposed rates signed by ten percent or more of the ratepayers or twenty-five ratepayers, whichever is more, receiving service from such a utility if the commission determines there is just cause for reviewing the proposed rates. For purposes of this section, a "service connection" means a metered hookup to the utility's water system or a sewer tap to the utility's wastewater system, and each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer. The petition shall be signed by the person in whose name service is carried. The petition shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. In all other respects, Section 62-8-7 NMSA 1978 shall apply to such water utilities. If a utility provides both water and sewer service, the service connection revenues attributable to the provision of water service only shall determine whether the procedures specified in this subsection shall apply to a schedule proposing new rates for water service, and the service connection revenues attributable to the provision of sewer service shall determine whether the procedures specified in this subsection shall apply to a schedule proposing new rates for sewer service. Nothing in this subsection shall prevent a utility from filing for a rate change pursuant to any other rule or procedure of the commission.

B. Whenever there is filed with the commission a schedule proposing new rates pursuant to Section 62-8-7 NMSA 1978 by a public utility as defined in Paragraph (3) or (5) of Subsection G of Section 62-3-3 NMSA 1978, with more than an aggregate of one thousand five hundred service connections and fewer than an aggregate of five thousand service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, the rates shall become effective as proposed by the public utility without a hearing; provided that the public utility shall be required to give written notice of the proposed rates to the ratepayers receiving service from the public utility at least sixty days prior to filing the proposed rate change with the commission; and provided further that the commission shall enter upon a hearing concerning the reasonableness of proposed rates filed by such a public utility pursuant to Subsections C and D

of Section 62-8-7 NMSA 1978 when a rate increase would have the effect of increasing rates more than eight percent in a twelve-month period, or upon the commission staff's motion or upon the filing with the commission of a protest seeking review of the proposed rates signed by ten percent or more of the ratepayers receiving service from the public utility, if the commission determines there is just cause for reviewing the proposed rates. The petition shall be signed by the person in whose name service is carried. The petition shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. In all other respects, Section 62-8-7 NMSA 1978 shall apply to such water utilities. If a public utility provides both water and sewer service, the service connection revenues attributable to the provision of water service only shall determine whether the procedure specified in this subsection shall apply to a schedule proposing new rates for water service, and the service connection revenues attributable to the provision of sewer service shall determine whether the procedures specified in this subsection shall apply to a schedule proposing new rates for sewer service. Nothing in this subsection shall prevent a public utility from filing for a rate change pursuant to any other rule or procedure of the commission.

C. Notwithstanding the provisions of Subsections A and B of this section, a public utility as defined in Paragraph (3) or (5) of Subsection G of Section 62-3-3 NMSA 1978, with fewer than an aggregate of five thousand service connections in any utility operating district or division in New Mexico averaged over the previous three consecutive years, that is currently in good standing with all applicable requirements of the commission, may adjust its charges for commodity and service by up to two percent in any calendar year without a hearing; provided that the public utility shall not have changed its rates in the prior twelve-month period; and provided further that the public utility shall be required to give written notice of the proposed rate adjustments to the ratepayers receiving service from the public utility prior to its effective date. The increased rates shall not become effective until at least thirty days after notice and filing with the commission. If a public utility provides both water and sewer service, the service connection revenues attributable to the provision of water service only shall determine whether the procedure specified in this subsection shall apply to any schedule proposing any new rate or rates for water service, and the service connection revenues attributable to the provision of sewer service shall determine whether the procedures specified in this subsection shall apply to any schedule proposing any new rate or rates for sewer service. Nothing in this subsection shall prevent a public utility from filing for a rate change pursuant to any other rule or procedure of the commission.

History: Laws 1985, ch. 221, § 3; 1987, ch. 52, § 3; 2005, ch. 339, § 4.

The 2005 amendment, effective July 1, 2005, deleted the former provision of Subsection A, which provided that rates become effective without hearing if filed by a public utility whose annual operating revenues averaged less than \$500,000 over a consecutive three year period; provided in Subsection A that rates become effective without hearing if filed by a public utility with equal to or fewer than an aggregate of one thousand five hundred connections in any district or division averaged over the previous three consecutive years; provided in Subsection A that the commission shall hold a hearing if a protest is signed by ten percent of ratepayers or twenty-five ratepayers, whichever is more, if the commission determines there is just cause for reviewing the proposed rates; added the definition of "service connection" in Subsection A to include a metered hookup to the utility's water system or a sewer tap to the utility's wastewater system; changed "annual

operating revenues" to "service connection revenues" in Subsection A; provided in Subsection A that nothing shall prevent a utility from filing for a rate change pursuant to any other rule or procedure of the commission; added Subsection B to provide for rates changed by a public utility with more than an aggregate of one thousand five hundred service connections and fewer than an aggregate of five thousand service connections; added Subsection C to provide for rate increase of up to two percent without a hearing by a public utility that has fewer than an aggregate of five thousand service connections and that meets the criteria of Subsection C.

The 1987 amendment, effective June 19, 1987, designated the existing language as Subsection A (there is no Subsection B), substituted "this section" for "this act" near the beginning of the second sentence, added the present last sentence and made minor language changes throughout the section.

62-8-8. Inspection and supervision fee.

Each utility doing business in this state and subject to the control and jurisdiction of the commission with respect to its rates or service regulations shall pay annually to the state a fee for the inspection and supervision of such business in an amount equal to five hundred six thousandths percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. That sum shall be payable on or before the first day of April in each year. An inspection and

supervision fee shall be paid by utilities in addition to all property, franchise, license, intangible and other taxes, fees and charges provided by law. No similar inspection and supervision fee shall be measured by the amount of the gross receipts of such utility for the calendar year next preceding the date fixed in this section for the payment of the fee. In the case of utilities engaged in interstate business, the inspection and supervision fee shall be measured by the gross receipts of those utilities from intrastate business only for that preceding calendar year and not in any respect upon receipts derived wholly or in part from interstate business. No inspection and supervision fee shall be charged on the gross receipts from the sale of gas, water or electricity to a utility regulated by the commission for resale to the public.

History: 1953 Comp., § 68-6-8, enacted by Laws 1967, ch. 96, § 6; 1992, ch. 22, § 1; 2003, ch. 14, § 21; 2005, ch. 339, § 5.

Repeals and reenactments. — Laws 1967, ch. 96, § 6, repealed 68-6-8, 1953 Comp., relating to inspection and supervision fees, and enacted the above section.

The 2005 amendment, effective July 1, 2005, changed the date the sum is payable from the last day of February to the first day of April.

The 2003 amendment, effective July 1, 2003, substituted "fee" for "fees" in the section heading, in the first sentence, substituted "five hundred six thousandths" for "one-half of one" following "an amount equal to", deleted "In calendar year 1992, that sum shall be payable in equal quarterly installments on or before the last day of February, May, August and November, respectively. Thereafter" preceding "That sum shall", substituted "An inspection and supervision fee shall be paid by utilities in addition to" for "Inspection and supervision fees shall be paid by such utilities in addition to any and" preceding "all property, franchise", deleted "now or hereafter" preceding "provided by law", in the final and penultimate sentences substituted "the inspection and supervision fee" for "the fees".

The 1992 amendment, effective March 5, 1992, substituted the present second and third sentences for the former second sentence, which read "Said sum shall be payable in equal quarterly installments on or before the last day of February, May, August and November in each year" and made stylistic changes.

ANNOTATIONS

Recovery of costs of prudence review audit. — Where a public utility applied for an emergency fuel and purchased power cost adjustment clause; the public regulation commission approved the fuel and purchased power cost adjustment clause; to ensure the proper administration of the fuel and purchased power costs adjustment clause and to ensure that the public utility's electric power was generated at the lowest reasonable cost, the commission required the public utility to pay the costs of an independent prudence review of its fuel and purchased power costs by auditors selected by and under the direction of

the commission; and the commission permitted the public utility to treat all prudence review costs paid by the public utility as a regulatory asset which could be recovered from the public utility's ratepayers through the public utility's base rates, the costs of the prudence review audit were a legitimate operating expense of the public utility and could be recovered through its base rates. *Albuquerque Bernalillo Co. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Fees permitted for prior year's services. — The commission has authority to assess and collect inspection and supervision fees for the preceding year, despite the fact that, during the year the fees are actually assessed and become payable, the utility is no longer doing business in New Mexico. *United Waterworks, Inc. v. N.M. Pub. Util. Comm'n*, 2000-NMCA-057, 129 N.M. 262, 5 P.3d 584.

Legislative intent is that fees collected go to the state, not to any specific fund. Once deposited with the state, in the general fund, they may be appropriated by the legislature as it sees fit. Thus, the commission is only entitled for its operation to such money generated by the fees collected pursuant to this section as the legislature may appropriate. The commission may not expend the entire amount received. 1978 Op. Att'y Gen. No. 78-10.

Fee calculated at beginning of year based on past year's receipts. — Under this section the fee to be paid in any given year is calculated at the beginning of the year on the basis of gross receipts for the past year. It is only the payment of the fee which is permitted to be spread throughout the year. 1967 Op. Att'y Gen. No. 67-96.

Where utility operates only for part of a year, it is liable for the full annual fee. 1943-44 Op. Att'y Gen. No. 43-4266 (rendered under former statute).

Effect of disposing of major part of holdings. — Where utility disposes of a major part of its holdings, the fees for the remaining holdings will be based upon gross receipts of such remaining holdings for the previous year. 1943-44 Op. Att'y Gen. No. 43-4266 (rendered under former statute).

First fees paid by rural electric cooperatives. 1961-62 Op. Att'y Gen. No. 62-16 (rendered under former statute).

62-8-9. Disposition of funds; interest and penalty on late payments.

A. All fees and money collected under the provisions of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], including fees provided for in Section 62-13-2 NMSA 1978 and including fees and charges for inspection and supervision, for stenographic services and for transcripts of evidence, shall be remitted by the commission to the state treasurer not later than the day following receipt. Payments provided for in the Public Utility Act shall be obligatory upon all utilities subject to the Public Utility Act.

B. When a fee is not paid on the date it is due, interest shall be paid to the state on the amount due. The interest on the amount due shall start to accrue on the day following the due date and will continue to accrue until the total amount due is paid. The rate of interest on a late

fee payment shall be fifteen percent per year, computed at the rate of one and one-fourth percent per month.

C. In addition to any interest due on a late fee payment, a penalty shall be paid to the state for failure to pay the fee when it was due. The penalty imposed shall be two percent of the amount of the fee due.

D. The attorney general, in the name of the state, shall bring suit to collect fees, interest and penalties that remain unpaid.

History: 1953 Comp., § 68-6-9.1, enacted by Laws 1957, ch. 25, § 1; 1992, ch. 23, § 1.

Compiler's notes. — Sections 62-8-1 to 62-8-9 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however,

that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1992 amendment, effective July 1, 1992, added the present catchline; added the Subsection A designation; in Subsection A, made a section reference substitution, inserted "inspection and supervision, for", deleted the former last sentence, relating to failure, neglect or refusal of a utility to pay on the date it is due, and made stylistic changes; and added Subsections B, C, and D.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 65.

62-8-10. Utility service; seriously ill individuals.

Utility service shall not be discontinued to any residence where a seriously or chronically ill person is residing if the person responsible for the utility service charges does not have the financial resources to pay the charges and if a licensed physician, physician assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner certifies that discontinuance of service might endanger that person's health or life and the certificate is delivered to a manager or officer of the provider of the utility service at least two days prior to the due date of a billing for service. The commission shall provide by rule the procedure necessary to carry out this section.

History: 1978 Comp., § 62-8-10, enacted by Laws 2000, ch. 88, § 2.

Repeals and reenactments. — Laws 2000, ch. 88, § 2 repealed former 62-8-10 NMSA 1978, as amended by Laws 1993, ch. 282, § 34, relating to the discontinuance of utility service to seriously ill persons, and enacted a new section, effective March 7, 2000.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of electric utility to nonpatron for interruption or failure of power, 54 A.L.R.4th 667.

Debtor's protection under 11 USCS § 366 against utility service cutoff, 83 A.L.R. Fed. 207.

62-8-11. Consumer information; disclosure prohibited.

A. A public utility, as defined pursuant to Section 62-3-3 NMSA 1978, or its employees or agents shall not sell or disclose consumers' nonpublic personal information without the customer's permission or unless it is in accordance with standardized credit reporting practices, pursuant to the provisions of Chapter 56, Article 3 NMSA 1978 or the federal Fair Credit Reporting Act or other reporting requirements imposed on the public utility.

B. Exempted from the provisions of this section are:

(1) the public regulation commission pursuant to the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] and the Public Regulation Commission Act [8-8-1 NMSA 1978] and rules adopted pursuant to those acts; or

(2) an action by a government agency or an officer, employee or agent of an agency acting on behalf of the agency to obtain telephone records in connection with the performance of the official duties of the agency.

History: Laws 2007, ch. 90, § 1.

Cross references. — For the federal Fair Credit Reporting Act, see 15 U.S.C. § 1681 et seq.

Effective dates. — Laws 2007, ch. 90, § 2 made Laws 2007, ch. 90, § 1 effective July 1, 2007.

62-8-12. Applications to expand transportation electrification.

A. No later than January 1, 2021, and thereafter upon request by the commission, but no more frequently than every two years, a public utility shall file with the commission an application to expand transportation electrification. Applications may include investments or incentives to facilitate the deployment of charging infrastructure and associated electrical equipment that support transportation electrification, including electrification of public transit and publicly owned vehicle fleets, rate designs or programs that encourage charging that supports the operation of the electric grid and customer education and outreach programs that increase awareness of such programs and of the benefits of transportation electrification.

B. When considering applications for approval, the commission shall consider whether the investments, incentives, programs and expenditures are:

(1) reasonably expected to improve the public utility's electrical system efficiency, the integration of variable resources, operational flexibility and system utilization during off-peak hours;

(2) reasonably expected to increase access to the use of electricity as a transportation fuel, with consideration given for increasing such access to low-income users and users in underserved communities;

(3) designed to contribute to the reduction of air pollution and greenhouse gases;

(4) reasonably expected to support increased consumer choices in electric vehicle charging and related infrastructure and services; allow for private capital investments and skilled jobs in related services; and provide customer information and education;

(5) reasonable and prudent, as determined by the commission; and

(6) transparent, incorporating public reporting requirements to inform program design and commission policy.

C. A public utility that undertakes measures to expand transportation electrification pursuant to this section shall have the option of recovering the public utility's reasonable costs for the expansion through a commission-approved tariff rider or base rate or both.

D. The provisions of this section do not apply to a distribution cooperative organized pursuant to the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978].

E. As used in this section:

(1) "low-income" means annual household adjusted gross income, as defined in the Income Tax Act [Chapter 7, Article 2 NMSA 1978], of equal to or less than two hundred percent of the federal poverty level;

(2) "transportation electrification" means the use of electricity from external sources to power all or part of passenger vehicles, trucks, buses, trains, boats or other equipment that transport goods or people; and

(3) "underserved community" means an area in this state, including a county, municipality or neighborhood, or subset of such area, where the median income of the area is low-income.

History: Laws 2019, ch. 196, § 1.

Effective dates. — Laws 2019, ch. 196 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-8-13. Application for grid modernization projects.

A. A public utility may file an application with the commission to approve grid modernization projects that are needed by the utility, or upon request of the commission. Applications may include requests for approval of investments or incentives to facilitate grid modernization, rate designs or programs that incorporate the use of technologies, equipment or infrastructure associated with grid modernization and customer education and outreach programs that increase awareness of grid modernization programs and of the benefits of grid modernization. Applications shall include

the utility's estimate of costs for grid modernization projects. Applications for grid modernization projects shall be filed pursuant to Sections 62-9-1 and 62-9-3 NMSA 1978, as applicable.

B. When considering applications for approval, the commission shall review the reasonableness of a proposed grid modernization project and as part of that review shall consider whether the requested investments, incentives, programs and expenditures are:

(1) reasonably expected to improve the public utility's electrical system efficiency, reliability, resilience and security; maintain reasonable operations, maintenance and ratepayer costs; and meet energy demands through a flexible, diversified and distributed energy portfolio, including energy standards established in Section 62-16-4 NMSA 1978;

(2) designed to support connection of New Mexico's electrical grid into regional energy markets and increase New Mexico's capability to supply regional energy needs through export of clean and renewable electricity;

(3) reasonably expected to increase access to and use of clean and renewable energy, with consideration given for increasing access to low-income users and users in underserved communities;

(4) designed to contribute to the reduction of air pollution, including greenhouse gases;

(5) reasonably expected to support increased product and program offerings by utilities to their customers; allow for private capital investments and skilled jobs in related services; and provide customer protection, information or education;

(6) transparent, incorporating public reporting requirements to inform project design and commission policy; and

(7) otherwise consistent with the state's grid modernization planning process and priorities.

C. Except as provided in Subsection D of this section, a public utility that undertakes grid modernization projects approved by the commission may recover its reasonable costs through an approved tariff rider or in base rates, or by a combination of the two. Costs that are no greater than the amount approved by the commission for a utility grid modernization project are presumed to be reasonable. A tariff rider proposed by a public utility to fund approved grid modernization projects shall go into effect thirty days after filing, unless suspended by the commission for a period not to exceed one hundred eighty days. If the tariff rider is not approved or suspended within thirty days after filing, it shall be deemed approved as a matter of law. If the commission has not acted to approve or disapprove the tariff rider by the end of the suspension period, it shall be deemed approved as a matter of law.

D. Costs for a grid modernization project that only benefits customers of an electric distribution system shall not be recovered from customers served at a level of one hundred ten thousand volts or higher from an electric transmission system in New Mexico.

E. The provisions of this section do not apply to a distribution cooperative organized pursuant to the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978].

F. As used in this section, "grid modernization" means improvements to electric distribution or transmission infrastructure through investments in assets, technologies or services that are designed to modernize the electrical system by enhancing electric distribution or transmission grid reliability, resilience, interconnection of distributed energy resources, distribution system efficiency, grid security against cyber and physical threats, customer service or energy efficiency and conservation and includes:

(1) advanced metering infrastructure and associated communications networks;

(2) intelligent grid devices for real time or near-real time system and asset information;

(3) automated control systems for electric transmission and distribution circuits and substations;

(4) high-speed, low-latency communications networks for grid device data exchange and remote and automated control of devices;

(5) distribution system hardening projects for circuits and substations designed to reduce service outages or service restoration times, but does not include the conversion of overhead tap lines to underground service;

(6) physical security measures at critical distribution substations;

(7) cybersecurity measures;

(8) systems or technologies that enhance or improve distribution system planning capabilities by the public utility;

- (9) technologies to enable demand response;
- (10) energy storage systems and microgrids that support circuit-level grid stability, power quality, reliability or resiliency or provide temporary backup energy supply;
- (11) infrastructure and equipment necessary to support electric vehicle charging or the electrification of community infrastructure or industrial production, processing, or transportation; and
- (12) new customer information platforms designed to provide improved customer access, greater service options and expanded access to energy usage information.

History: Laws 2020, ch. 15, § 3; 2021, ch. 110, § 1.

The 2021 amendment, effective April 6, 2021, clarified that grid modernization projects may include distribution system hardening projects for circuits and substations designed to reduce service outages or service restoration times, but does not include the conversion of overhead tap

lines to underground service; in Subsection F, Paragraph F(5), after "projects for circuits", deleted "not including the conversion of overhead tap lines to underground service", and after "restoration times", added "but does not include the conversion of overhead tap lines to underground service".

ARTICLE 9

Utility Franchise

Sec.

62-9-1. New construction; ratemaking principles.

62-9-1.1. Additional authority with respect to water and sewer utilities.

62-9-2. Applications by utilities brought under the Public Utility Act.

62-9-2.1. Applications by sewer utilities brought under the Public Utility Act.

62-9-3. Location control; limitations.

62-9-3.1. Limited regulation of certain jointly owned generation facilities.

Sec.

62-9-3.2. Application for determination of right-of-way width.

62-9-4. Authority exercised.

62-9-5. Abandonment of service.

62-9-6. Certificates; application; issuance.

62-9-7. Legislative declaration; voluntary service agreements.

62-9-1. New construction; ratemaking principles.

A. No public utility shall begin the construction or operation of any public utility plant or system or of any extension of any plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation. This section does not require a public utility to secure a certificate for an extension within any municipality or district within which it lawfully commenced operations before June 13, 1941 or for an extension within or to territory already served by it, necessary in the ordinary course of its business, or for an extension into territory contiguous to that already occupied by it and that is not receiving similar service from another utility. If any public utility or mutual domestic water consumer association in constructing or extending its line, plant or system unreasonably interferes or is about to unreasonably interfere with the service or system of any other public utility or mutual domestic water consumer association rendering the same type of service, the commission, on complaint of the public utility or mutual domestic water consumer association claiming to be injuriously affected, may, upon and pursuant to the applicable procedure provided in Chapter 62, Article 10 NMSA 1978, and after giving due regard to public convenience and necessity, including reasonable service agreements between the utilities, make an order and prescribe just and reasonable terms and conditions in harmony with the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978] to provide for the construction, development and extension, without unnecessary duplication and economic waste.

B. If a certificate of public convenience and necessity is required pursuant to this section for the construction or extension of a generating plant or transmission lines and associated facilities, a public utility may include in the application for the certificate a request that the commission determine the ratemaking principles and treatment that will be applicable for the facilities that are the subject of the application for the certificate. If such a request is made, the commission shall, in the order granting the certificate, set forth the ratemaking principles and treatment that

will be applicable to the public utility's stake in the certified facilities in all ratemaking proceedings on and after such time as the facilities are placed in service. The commission shall use the ratemaking principles and treatment specified in the order in all proceedings in which the cost of the public utility's stake in the certified facilities is considered. If the commission later decertifies the facilities, the commission shall apply the ratemaking principles and treatment specified in the original certification order to the costs associated with the facilities that were incurred by the public utility prior to decertification.

C. The commission may approve the application for the certificate without a formal hearing if no protest is filed within sixty days of the date that notice is given, pursuant to commission order, that the application has been filed. The commission shall issue its order granting or denying the application within nine months from the date the application is filed with the commission. Failure to issue its order within nine months is deemed to be approval and final disposition of the application; provided, however, that the commission may extend the time for granting approval for an additional six months for good cause shown.

D. In an application for a certificate of public convenience and necessity for an energy storage system, the commission shall approve energy storage systems that:

- (1) reduce costs to ratepayers by avoiding or deferring the need for investment in new generation and for upgrades to systems for the transmission and distribution of energy;
- (2) reduce the use of fossil fuels for meeting demand during peak load periods and for providing ancillary services;
- (3) assist with ensuring grid reliability, including transmission and distribution system stability, while integrating sources of renewable energy into the grid;
- (4) support diversification of energy resources and enhance grid security;
- (5) reduce greenhouse gases and other air pollutants resulting from power generation;
- (6) provide the public utility with the discretion, subject to applicable laws and rules, to operate, maintain and control energy storage systems so as to ensure reliable and efficient service to customers; and
- (7) are the most cost effective among feasible alternatives.

E. As used in this section:

- (1) "energy storage system" means methods and technologies used to store electricity; and
- (2) "mutual domestic water consumer association" means an association created and organized pursuant to the provisions of:
 - (a) Laws 1947, Chapter 206; Laws 1949, Chapter 79; or Laws 1951, Chapter 52; or
 - (b) the Sanitary Projects Act [Chapter 3, Article 29 NMSA 1978].

History: Laws 1941, ch. 84, § 46; 1941 Comp., § 72-701; 1953 Comp., § 68-7-1; Laws 1965, ch. 289, § 10; 1967, ch. 96, § 1; 1990, ch. 95, § 1; 2000, ch. 51, § 1; 2005, ch. 340, § 1; 2019, ch. 65, § 25.

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2019 amendment, effective June 14, 2019, provided guidelines for the public regulation commission when reviewing for approval an application for a certificate of public convenience and necessity for an energy storage system, and defined "energy storage system; added a new Subsection D and redesignated former Subsection D as Subsection E; in Subsection E, added a new Paragraph E(1) and redesignated former Paragraphs E(1) and E(2) as Subparagraphs E(2)(a) and E(2)(b), respectively.

The 2005 amendment, effective July 1, 2005, added Subsection B to provide for the determination of the rate making principles and treatment that will be applicable for a facility that is subject to a certificate of public convenience and necessity; and added Subsection C to provide for the approval of the certificate of public convenience and necessity without a hearing.

The 2000 amendment, effective May 17, 2000, designated the existing provisions of the section as Subsection A, and in Subsection A deleted "after the effective date of this 1941 act" following "No public utility shall" in the first sentence, substituted "June 13, 1941" for "the effective date of this 1941 act" in the second sentence, deleted "Notwithstanding any other provision of the Public Utility Act, as amended, or any privilege granted under that act" from the beginning of the third sentence, and added Subsection B.

The 1990 amendment, effective May 16, 1990, inserted "or mutual domestic water consumer association" following "public utility" in three places, substituted "Chapter 62, Article 10 NMSA 1978" for "Sections 68-8-1 through 68-8-16 New Mexico Statutes Annotated, 1953 Compilation" in the third sentence and made numerous stylistic changes throughout the section.

ANNOTATIONS

Constitutionality. — The preference in this section indicated by its protection of mutual domestic water consumer associations from invasion by a regulated utility but not from an unregulated utility does not lack a rational basis, and an argument that it unconstitutionally discriminates against the invaded utility solely on the basis of the status of the invader was without merit. *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28 (decided prior to 2000 amendment).

Deference to commission interpretation. — The court will defer to the public regulation commission's interpretation of the ambiguous phrase "unreasonably interfere with the service or system" because the public regulation commission has policy-making authority to plan and coordinate the activities of New Mexico public utilities and because the public regulation commission has developed the expertise to understand the operation of public utilities. *Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-032, 140 N.M. 6, 139 P.3d 166.

Interpretation of "unreasonably interfere with the service or system". — The public regulation commission interpretation of the phrase "unreasonably interfere with the service or system", which presumes that all contiguous territory lies within a utility's "service or system", and its definition of "contiguous" to include territory within one-half mile of a public utility's pipes or facilities are not arbitrary or capricious. *Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-032, 140 N.M. 6, 139 P.3d 166.

Substantial evidence of interference. — Evidence that encroachment by a competing public utility on the service area of an objecting public utility would interfere with the objecting public utility's physical system, planning to provide future service and ability to realize economies of scale for its customers is substantial evidence of interference with the service or system of the objecting public utility. *Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-032, 140 N.M. 6, 139 P.3d 166.

State engineer approval of water rights obtained. — By an encroaching public utility to be used in disputed service area occupied by another public utility does not preclude the public regulation commission from entering an order denying the encroaching public utility the right to provide service in the disputed area. *Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-032, 140 N.M. 6, 139 P.3d 166.

Water users association not within commission's jurisdiction. — A water users association formed under Chapter 73, Article 5 NMSA 1978 was not a mutual domestic water consumer within the meaning of this section; further, absent any evidence showing the association was subject to the Public Utility Act, it did not come within the jurisdiction of the public utility commission (now public regulation commission). *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28 (decided prior to 2000 amendment).

City not within commission's jurisdiction. — A city operating a water facility which had not elected to come under the Public Utility Act and which had a population of less than 200,000 was not a public utility within the jurisdiction of the public utility commission (now public regulation commission). *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28 (decided prior to 2000 amendment).

Certificate is needed for construction, but not for extensions where lawfully operating. — This section prohibits construction of any facilities for public utility service without first obtaining a certificate of convenience

and necessity, and provides that the holder of a certificate need not get a permit for extensions within a district where it has lawfully commenced operations, or to territory being served by it and necessary in the ordinary course of its business. *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

New certificate not required for service to few transferred customers. — It is not required that utility obtain a new certificate for the purpose of providing service to a few customers who are to be transferred to it from another utility. *Gonzales v. Pub. Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

1987 amendment to this section did not annul appellant's certificate of public convenience and necessity which was valid at the date of amendment. *Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802.

Other provisions govern revocation of certificate. — If the commission is assumed to have power to revoke a certificate, the authority as well as the procedure therefor is found in Sections 62-10-1 to 62-10-16 NMSA 1978 rather than in Sections 62-9-1 and 62-9-4 NMSA 1978, as contended by the commission. *Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433 (1966).

Commission cannot deny right to continue under valid certificate. — The commission cannot deny to service company its right to continue in the area covered by its certificate if its certificate has been exercised as required by Section 62-9-4 NMSA 1978, or, in other words, if its certificate is valid in the area sought to be served by it, even though other public utilities have overlapping or conflicting certificates; furthermore, the commission cannot hold existing franchise rights null and void, nor can it make an order which would conflict with Section 62-9-2 B NMSA 1978, which states that when certificates granted utilities under that section overlap, certificates theretofore issued and exercised within the time required are valid under Section 62-9-4 NMSA 1978 and both utilities shall be permitted to continue service. *Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

Even though commission could find certificate void under this section. — A conclusion that the certificate of a public service company was null and void, if based upon proper findings, could probably be made in determining the issues in a hearing under this section as a necessary incident of the larger questions presented thereunder. *Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

If holder does not exercise certificate in time. — A certificate of public convenience and necessity cannot be declared null and void in the absence of findings by the commission, based upon substantial evidence, that the certificate holder failed to exercise its right with diligence. *Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

Formerly, section did not apply to rural electric cooperatives. *Socorro Elec. Coop. v. Pub. Serv. Co.*, 1959-NMSC-105, 66 N.M. 343, 348 P.2d 88; 1957-58 Op. Att'y Gen. No. 57-31.

Section does not apply to water and sanitation districts. — Water and sanitation districts are not required by statute to obtain a certificate of convenience

and necessity as are public utilities under the jurisdiction of the commission. 1971 Op. Att'y Gen. No. 71-56 (decided prior to 2000 amendment).

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 36 Am. Jur. 2d Franchises §§ 6, 7; 64 Am. Jur. 2d Public Utilities §§ 237, 277.

Validity of contract between public utilities other than carriers, dividing territory and customers, 70 A.L.R.2d 1326.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

73B C.J.S. Public Utilities §§ 3, 66, 69, 99.

62-9-1.1. Additional authority with respect to water and sewer utilities.

A. Notwithstanding any other provision of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], or any provision of the Municipal Code [Chapter 3 NMSA 1978, except Article 66], or any privilege granted under either act, if any municipality that has not elected to come within the terms of the Public Utility Act, as provided in Section 62-6-5 NMSA 1978, constructs or extends or proposes to construct or extend its water or sewer line or system or water pumping station or reservoir into a geographical area described in a certificate of public convenience and necessity granted by the commission to a public utility rendering the same type of service, the commission, on complaint of the public utility claiming to be injuriously affected thereby, shall, after giving notice to the municipality and affording the municipality an opportunity for a hearing with respect to the issue of whether its water or sewer line, plant or system actually intrudes or will intrude into the area certificated to the public utility, determine whether such intrusion has occurred or will occur. If the commission determines such an intrusion has occurred or will occur, the municipality owning or operating the water or sewer utility shall cease and desist from making such construction or extension in the absence of written consent of the public utility involved and approval of the commission.

B. The authority and jurisdiction conferred by Subsection A of this section shall be in addition and cumulative to the independent authority of the commission to determine territorial disputes between public utilities and between mutual domestic water consumer associations and public utilities as provided in Section 62-9-1 NMSA 1978, which provisions shall govern the resolution of a territorial dispute between a municipality that has elected to come within the terms of the Public Utility Act, as provided in Section 62-6-5 NMSA 1978, and any other public utility rendering the same type of service. Provided, however, in the event that a certificate of public convenience and necessity granted to such a municipality overlaps, or conflicts with, a valid certificate previously issued by the commission and exercised within the term required under Section 62-9-4 NMSA 1978, the municipal utility shall be permitted to continue operation of its plant, line and system in existence upon the effective date of this 1991 act and the other public utility may continue service in the area covered by its certificate, subject to the other provisions of the Public Utility Act.

C. For purposes of this section, "municipality" means any municipality that has a population of more than two hundred thousand as determined in the most recent federal decennial census and is located in a class A county.

History: Laws 1991, ch. 143, § 2.

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Right of municipality to provide service in the certified area of a public utility. — Where the public

regulation commission issued the public utility a certificate of public convenience and necessity authorizing the public utility to provide water in an area outside the limits of the municipality; the municipality later annexed three undeveloped tracts of land within the public utility's certified area, subdivided the land and committed itself to provide water to the subdivision; and the municipality had not elected to become subject to the Public Utilities Act, Section 62-1-1 NMSA 1978 et seq., and did not have a population of more than 200,000, the public utility's certificate of public convenience and necessity did not prevent the municipality from competing with the public utility in the certified area because the municipality was not subject to the Public Utilities Act. *Moongate Water Co., Inc. v. City of Las Cruces*, 2013-NMSC-018, 302 P.3d 405, affg 2012-NMCA-003, 269 P.3d 1.

Certificate of convenience and necessity did not grant exclusive service rights against a small

municipality. — A certificate of public convenience and necessity issued by the public regulation commission does not grant a public utility service rights against a municipality that has a population less than or equal to two hundred thousand people and that has not elected to be subject to the Public Utility Act. *Moongate Water Co., Inc. v. City of Las Cruces*, 2012-NMCA-003, 269 P.3d 1, cert. granted, 2012-NMCERT-001.

Where a privately owned and regulated public utility company held a certificate of convenience and necessity issued by the public regulation commission to provide water service to residents in an area of new residential subdivisions; a municipality annexed the area, extended its water utility infrastructure into the area as part of its municipal water utility system, and began providing water service to residents in the area; and the municipality

had a population of less than two hundred thousand and had not elected to be subject to the Public Utility Act, the certificate of convenience and necessity did not give the public utility exclusive service rights in the area against the municipal water system. *Moongate Water Co., Inc. v. City of Las Cruces*, 2012-NMCA-003, 269 P.3d 1, cert. granted, 2012-NMCERT-001.

City not within commission's jurisdiction. — A city operating a water facility which had not elected to come under the Public Utility Act and which had a population of less than 200,000 was not a public utility within the jurisdiction of the public utility commission (now public regulation commission). *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28.

62-9-2. Applications by utilities brought under the Public Utility Act.

A. Within sixty days after the effective date of this 1967 act, each utility brought within the jurisdiction of the commission by virtue of this 1967 act shall file with the commission an application, in such form as may be prescribed by the commission, for a certificate of public convenience and necessity covering its present plant, lines and system. Upon proof of the existence and operation of the plant, lines and system upon the effective date of this 1967 act, the commission shall grant the certificate to the utility.

B. In the event the certificate granted a utility under Subsection A of this section overlaps or conflicts with a valid certificate heretofore issued by the commission and exercised within the time required under Section 62-9-4 NMSA 1978, both certificates shall be valid and both utilities shall be permitted to continue service subject to the other provisions of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], as amended.

History: 1953 Comp., § 68-7-1.1, enacted by Laws 1967, ch. 96, § 7; 1993, ch. 282, § 35.

Repeals and reenactments. — Laws 1967, ch. 96, § 7, repealed 68-7-1.1, 1953 Comp., relating to applications by utilities covered by the Public Utility Act by virtue of Laws 1961, ch. 89, and enacted the above section.

Compiler's notes. — The words "this 1967 act," appearing in Subsection A, refer to Laws 1967, ch. 96, compiled as 62-3-1 to 62-3-4, 62-6-8, 62-8-8, 62-9-1, 62-9-2 and 62-9-6 NMSA 1978.

Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003. Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, in Subsection A, deleted "public service" following "jurisdiction of" and made stylistic changes; and substituted "Section 62-9-4 NMSA 1978" for "Section 68-7-2 New Mexico Statutes Annotated, 1953 Compilation" in Subsection B.

ANNOTATIONS

Certificate cannot be held void unless not exercised diligently. — A certificate of public convenience and necessity cannot be declared null and void in the absence of findings by the commission, based upon substantial evidence, that the certificate holder failed to exercise its right with diligence. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802.

Application covering existing facilities must be granted. — Upon timely filing of an application for a certificate of public convenience and necessity to cover a cooperative's "present plant, lines and system" and upon proof that the same are in existence and operating, the certificate so applied for must be granted. *Lea Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*, 1965-NMSC-057, 75 N.M. 191, 402 P.2d 377, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433 (1966) (decided under former similar provision).

Regardless of conflicting or overlapping certificates. — The commission cannot deny to service company its right to continue in the area covered by its certificate if its certificate has been exercised as required by Section 62-9-4 NMSA 1978, or, in other words, if its certificate is valid in the area sought to be served by it, even though other public utilities have overlapping or conflicting certificates; furthermore, the commission cannot hold existing franchise rights null and void, nor can it make an order which would conflict with this section, which states that when certificates granted utilities under this section overlap, certificates theretofore issued and exercised within the time required are valid under Section 62-9-4 NMSA 1978 and both utilities shall be permitted to continue service. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

New certificate and conflicting or overlapping certificate are both valid. — Subsection B provides that both the certificate so granted as well as any pre-existing certificate overlapping or conflicting with that granted to the cooperative shall be valid and the service under both shall continue. No suggestion of delineation of areas or territory served or to be served is contained in the plain language used by the legislature. *Lea Cnty.*

Elec. Coop. v. N.M. Pub. Serv. Comm'n, 1965-NMSC-057, 75 N.M. 191, 402 P.2d 377, cert. denied, 385 U.S. 969, 87

S. Ct. 506, 17 L. Ed. 2d 433 (1966) (decided under former similar provision).

62-9-2.1. Applications by sewer utilities brought under the Public Utility Act.

Within six months after the effective date of these 1987 amendments to the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], each sewer utility brought within the jurisdiction of the commission by virtue of these 1987 amendments to the Public Utility Act shall file with the commission an application, in such form as may be prescribed by the commission, for a certificate of public convenience and necessity covering its present plant, lines and system. Upon proof of the existence and operation thereof upon the effective date of these 1987 amendments to the Public Utility Act, the commission shall grant to the utility such certificate. The commission shall enter upon a hearing to determine whether the rate or rates of such a sewer utility in effect on the effective date of these amendments to the Public Utility Act are just and reasonable pursuant to Subsection D of Section 62-8-7 NMSA 1978 upon the filing with the commission of protests signed by ten percent or more of the ratepayers receiving sewer service from such a sewer utility. For purposes of this section, each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer. The protest shall be signed by the person in whose name service is carried. The protests shall be filed no later than sixty days after the filing with the commission of an application by the sewer utility for a certificate of public convenience and necessity as prescribed by this section. Each sewer utility filing an application for a certificate of public convenience and necessity under this section shall be required at the time of filing to give written notice to its ratepayers of the filing of its application and the ratepayers' rights to protest its rates under this section.

History: Laws 1987, ch. 52, § 4; 1993, ch. 282, § 36.

Compiler's notes. — The terms "these amendments" and "these 1987 amendments," referred to throughout the first three sentences, apparently mean Laws 1987, ch. 52, which appears as Sections 62-3-2.1, 62-3-3, 62-8-7.1 and 62-9-2.1 NMSA 1978.

Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is

ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, in the first sentence, inserted "1987" preceding "amendments" and substituted "the commission" for "the public service commission"; made a stylistic change in the second sentence; and substituted "The commission" for "The public service commission" at the beginning of the third sentence.

62-9-3. Location control; limitations.

A. The legislature finds that it is in the public interest to consider any adverse effect upon the environment and upon the quality of life of the people of the state that may occur due to plants, facilities and transmission lines needed to supply present and future electrical services. It is recognized that such plants, facilities and transmission lines will be needed to meet growing demands for electric services and cannot be built without in some way affecting the physical environment where these plants, facilities and transmission lines are located. The legislature therefore declares that it is the purpose of this section to provide for the supervision and control by the commission of the location within this state of new plants, facilities and transmission lines for the generation and transmission of electricity for sale to the public.

B. A person, including any municipality, shall not begin the construction of any plant designed for or capable of operation at a capacity of three hundred thousand kilowatts or more for the generation of electricity for sale to the public within or without this state, whether or not owned or operated by a person that is a public utility subject to regulation by the commission, or of transmission lines in connection with such a plant, on a location within this state unless the location has been approved by the commission. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities designed for or capable of operations at a

nominal voltage of two hundred thirty kilovolts or more, to be constructed in connection with and to transmit electricity from a new plant for which approval is required.

C. Application for approval shall contain all information required by the commission to make its determination, be made in writing setting forth the facts involved and be filed with the commission. The commission shall, after a public hearing and upon notice as the commission may prescribe, act upon the application. The commission may condition its approval upon a demonstration by the applicant that it has received all necessary air and water quality permits. A public utility regulated by the commission may submit an application pursuant to Section 62-9-1 NMSA 1978 for a certificate of public convenience and necessity prior to filing an application for location approval pursuant to this section in order to determine the need for the generating plant or transmission line prior to determination of the appropriate location.

D. Approval shall not be required for additions to or modifications of an existing plant or transmission line.

E. The commission shall approve the application for the location of the generating plant unless the commission finds that the operations of the facilities for which approval is sought will not be in compliance with all applicable air and water pollution control standards and regulations existing or will unduly impair system reliability. The commission shall not require compliance with performance standards other than those established by the agency of this state having jurisdiction over a particular pollution source.

F. The commission shall approve the application for the location of the transmission lines unless the commission finds that the location will unduly impair important environmental values or the operation of the proposed transmission lines will unduly impair power system reliability.

G. An application shall not be approved pursuant to this section that violates an existing state, county or municipal land use statutory or administrative regulation unless the commission finds that the regulation is unreasonably restrictive and compliance with the regulation is not in the interest of the public convenience and necessity, in which event and to the extent found by the commission, the regulation shall be inapplicable and void as to the siting. When it becomes apparent to the commission that an issue exists with respect to whether a regulation is unreasonably restrictive and compliance with the regulation is not in the interest of public convenience and necessity, it shall promptly serve notice of that fact by certified mail upon the agency, board or commission having jurisdiction for land use of the area affected and shall make the agency, board or commission a party to the proceedings upon its request and shall give it an opportunity to respond to the issue. The judgment of the commission shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting.

H. A public utility subject to the jurisdiction of the commission may elect to file an application pursuant to this section with the commission for location approval of an electric transmission line or associated facilities designed for or capable of operation at a nominal voltage of one hundred fifteen kilovolts or more but less than two hundred thirty kilovolts if:

- (1) the public utility files an application for construction, extension, rebuilding or improvement of the electric transmission line or associated equipment under any applicable county or municipal land use statute, ordinance or administrative regulation; and

- (2) the agency, board or commission of the county or municipality disapproves the application. For purposes of this subsection, "disapprove" means the failure of the county or municipal agency, board or commission to issue a final order approving the application within two hundred forty days of the public utility's filing of a complete application with the agency, board or commission. An application shall be deemed complete if within fifteen working days of the public utility's filing of the application, or a supplement or amendment thereto, the agency, board or commission fails to send written notice to the public utility enumerating the specific requirements under the applicable county or municipal land use statute, ordinance or administrative regulation that the application fails to satisfy.

I. Upon consideration of the application and the standards set forth in Subsection G of this section, the commission may authorize construction, extension, rebuilding or improvement of the transmission line or facilities notwithstanding the prior disapproval of the county or municipal agency, board or commission. The judgment of the commission shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting.

J. Nothing in this section shall be deemed to confer upon the commission power or jurisdiction to regulate or supervise any person, including a municipality, that is not otherwise a public utility regulated and supervised by the commission, with respect to its rates and service and with respect to its securities, nor shall any other provision of the Public Utility Act be applicable with respect to such a person, including a municipality.

K. The commission may approve an application filed pursuant to this section without a formal hearing if no protest is filed within sixty days of the date that notice is given that the application has been filed. The commission shall issue its order granting or denying the application within six months from the date the application is filed with the commission; provided, however, that:

(1) if a public utility simultaneously files an application for approval of location of a transmission line pursuant to this section and an application for a certificate of public convenience and necessity pursuant to Subsection B of Section 62-9-1 NMSA 1978, the commission shall issue its order granting or denying the applications within nine months from the date the applications are filed with the commission; provided, however, that the commission may extend the time for granting approval an additional six months for good cause shown;

(2) if a public utility files an application for approval of location of a transmission line pursuant to this section after its application for a certificate of public convenience and necessity has been approved pursuant to Subsection B of Section 62-9-1 NMSA 1978, the commission shall issue its order granting or denying the application for approval of location of a transmission line within ninety days from the date the application is filed with the commission; and

(3) if a public utility files an application for approval of location of a transmission line pursuant to this section while its application for a certificate of public convenience and necessity is pending pursuant to Subsection B of Section 62-9-1 NMSA 1978, and the application for a certificate is subsequently approved, the commission shall issue its order granting or denying the application for approval of location of a transmission line within ninety days from the date the application for certificate of public convenience and necessity is approved.

L. Failure to issue its order approving or denying an application filed pursuant to this section within the time periods set forth in Subsection [J] K of this section is deemed to be approval of the application; provided, however, that the commission may extend the time for granting approval for a transmission line that is subject to this section for an additional nine months upon finding that the additional time is necessary to determine if the proposed location of the line will unduly impair important environmental values.

M. In determining if the proposed location of the transmission line will unduly impair important environmental values, the commission may consider the following factors:

- (1) existing plans of the state, local government and private entities for other developments at or in the vicinity of the proposed location;
- (2) fish, wildlife and plant life;
- (3) noise emission levels and interference with communication signals;
- (4) the proposed availability of the location to the public for recreational purposes, consistent with safety considerations and regulations;
- (5) existing scenic areas, historic, cultural or religious sites and structures or archaeological sites at or in the vicinity of the proposed location; and
- (6) additional factors that require consideration under applicable federal and state laws pertaining to the location.

History: 1953 Comp., § 68-7-1.2, enacted by Laws 1971, ch. 248, § 1; 2001, ch. 303, § 1; 2005, ch. 339, § 6; 2005, ch. 340, § 2.

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws

1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For public utilities subject to jurisdiction of commission, see 62-3-3 G, 62-3-4, 62-6-4 and 62-6-5 NMSA 1978.

For regulation of issuance of securities, see 62-6-7 and 62-6-8 NMSA 1978.

2005 Multiple Amendments. — Laws 2005, ch. 339, § 6 and Laws 2005, ch. 340, § 2, both effective July 1, 2005, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 340,

§ 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 339, § 6, and Laws 2005, ch. 340, § 2 are described below. To view the session laws in their entirety, see the 2005 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2005, ch. 339, § 6, made substantive changes dealing with system reliability, and also made several minor technical changes. Laws 2005, ch. 340, § 2, provided that a public utility may apply for a certificate of public convenience and necessity before applying for location approval in order to determine the need for the plant or line prior to a determination of the appropriate location, provided a list of conditions that permit a public utility to file an application for location approval for an electric transmission line, provided for the authorization of a transmission line that has been disapproved by a county or municipal agency, board or commission, provided that the commission may approve an application without a hearing if no protest is filed within sixty days after notice has been given that an application has been filed, provided that if a public utility simultaneously files an application for location approval and an application for a certificate of public convenience and necessity, the commission shall issue its order within nine months after the applications are filed, provided that if a public utility files an application for location approval after an application for a certificate of public convenience and necessity has been approved, the commission shall issue its order within ninety days after the application is filed, and that if a public utility files an application for location approval while its application for public convenience and necessity is pending and the application for a certificate is subsequently approved, the commission shall issue its order within ninety days after the application for a certificate is approved, provided that failure to issue its order approving or denying an application filed pursuant to this section within the time periods set forth in this section is deemed to be approval of the application, and provided criteria for determining if a location of a transmission line will unduly impair environmental value.

Laws 2005, ch. 340, § 2, effective July 1, 2005, provided in Subsection C that a public utility may apply for a certificate of public convenience and necessity before applying for location approval in order to determine the need for the plant or line prior to a determination of the appropriate location; deleted the former provision in Subsection E, which provided that no approval is required for construction in progress on the effective date of this section; added Subsection H to provide for the conditions that permit a public utility to file an application for location approval for an electric transmission line; added Subsection I to provide for the authorization of a transmission line that has been disapproved by a county or municipal agency, board or commission; provided in Subsection K that the commission may approve an application without a hearing if no protest is filed within sixty days after notice has been given that an application has been filed; added Subsection K (1) through (3) to provide that if a public utility simultaneously files an application for location approval and an application for a certificate of public convenience and necessity, the commission shall issue its order within nine months after the applications are filed; provided that if a public utility files an application for location approval after an application for a certificate of public convenience

and necessity has been approved, the commission shall issue its order within ninety days after the application is filed; and that if a public utility files an application for location approval while its application for public convenience and necessity is pending and the application for a certificate is subsequently approved, the commission shall issue its order within ninety days after the application for a certificate is approved; provided in Subsection L that failure to issue its order approving or denying an application filed pursuant to this section within the time period set forth in Subsection J is deemed approval and deleted for former time period of six month within which the commission had to issue an order; and added Subsection M to provide criteria for determining if a location of a transmission line will unduly impair environmental value.

Laws 2005, ch. 339, § 6, effective July 1, 2005, changed "lines" to "transmission lines" in Subsection A; provided in Subsection E that the commission shall approve the location of the plant unless the commission finds that the operations of the facilities will unduly impair system reliability; and provided in Subsection F that the commission shall approve the location of the transmission lines unless the commission finds that the operation of the transmission lines will unduly impair power system reliability, and provided:

The 2001 amendment, effective June 15, 2001, deleted "within this state" following "a public utility subject to regulation by the commission" in Subsection B; deleted former Subsection C, concerning application for approval by an existing public utility; redesignated the subsequent subsections; in present Subsection C, deleted "If a person is not a public utility regulated by the commission" from the beginning of the subsection, added the "all information" requirement, and added the approval condition at the end of the subsection; substituted "section" for "act" in current Subsection D; added Subsection I; and made stylistic changes throughout the section.

ANNOTATIONS

Scope of commission authority. — Because the legislature empowered the public regulation commission to modify the common-law rule of relocation only for local regulations deemed unreasonable under Subsection G of this section, a tariff permitting the Public Service Company of New Mexico to recover relocation costs was ultra vires where the commission made no finding that the ordinance requiring the relocation was unreasonable. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

The commission's attempt to preempt local regulations imposing the costs of relocation on the Public Service Company of New Mexico was an unlawful infringement on the power of local governments to regulate the use of public ways by utilities. *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For article, "The Energy-Water Nexus: Socioeconomic Considerations and Suggested Legal Reforms in the Southwest," see 50 Nat. Res. J. 563 (2010).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 237.

62-9-3.1. Limited regulation of certain jointly owned generation facilities.

No municipality or H class county shall hereafter begin construction or operation of any jointly owned generating facility within this state without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation;

provided, however, that the commission's regulation shall be limited to such determination unless the municipality or H class county has elected to come under the general supervision of the commission as provided by law.

History: Laws 1979, ch. 260, § 18.

Compiler's notes. — Laws 1979, ch. 260, § 19, provided that the act shall be liberally construed to carry out its purposes.

Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998,

Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Severability. — Laws 1979, ch. 260, § 20, provided for the severability of the act if any part or application thereof is held invalid.

62-9-3.2. Application for determination of right-of-way width.

A. Unless otherwise agreed to by the parties, no person shall begin the construction of any transmission line requiring a width for right of way of greater than one hundred feet without first obtaining from the commission a determination of the necessary right-of-way width to construct and maintain the transmission line. For the purposes of this subsection, "construction" does not include acquisition of rights of way, preparation of surveys or ordering of equipment.

B. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities requiring a width for right of way of greater than one hundred feet.

C. Application for the right-of-way width determination shall contain all information required by the commission to make its determination, be made in writing, setting forth the facts involved, and be filed with the commission.

D. The applicant shall cause notice of the time and place of hearing on the application for the right-of-way determination to be given to any owner of property proposed to be taken and, if applicable, to the person in actual occupancy of the property. Notice shall be given by mailing a copy by ordinary first class mail at least twenty days before the time set for hearing. Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

E. The commission shall, after public hearing, act upon the application.

F. The commission shall issue its order granting or denying the application within six months from the date the application is filed with the commission. Failure to issue its order within six months is deemed to be approval of the application.

History: Laws 1980, ch. 20, § 18; 1993, ch. 282, § 37; 2001, ch. 303, § 2.

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2001 amendment, effective June 15, 2001, deleted former Subsection C, concerning application by a person regulated by the commission; redesignated the subsequent subsections; in current Subsection C, deleted language concerning application by persons not regulated by the commission, and inserted the "all information" requirement; and added Subsection F.

The 1993 amendment, effective June 18, 1993, deleted "public service" preceding "commission" in the first sentence of Subsection A; and made minor stylistic changes in Subsections A and E.

ANNOTATIONS

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

62-9-4. Authority exercised.

A certificate of convenience and necessity shall remain in full force and effect for the period designated by the commission unless such authority is modified or becomes void because the authority has not been exercised within such period.

History: 1978 Comp., § 62-9-4, enacted by Laws 1980, ch. 20, § 19.

Repeals and reenactments. — Laws 1980, ch. 20, § 19, repealed former 62-9-4 NMSA 1978, relating to the time in which a certificate of convenience may be acted on, and enacted a new section.

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M.*

Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

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Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

62-9-5. Abandonment of service.

No utility shall abandon all or any portion of its facilities subject to the jurisdiction of the commission, or any service rendered by means of such facilities, without first obtaining the permission and approval of the commission. The commission shall grant such permission and approval, after notice and hearing, upon finding that the continuation of service is unwarranted or that the present and future public convenience and necessity do not otherwise require the continuation of the service or use of the facility; provided, however, that ordinary discontinuance of service or use of facilities for nonpayment of charges, nonuser or other reasons in the usual course of business shall not be considered as abandonment. In considering the present and future public convenience and necessity, the commission shall specifically consider the impact of the proposed abandonment of service on all consumers served in this state, directly or indirectly, by the facilities sought to be abandoned.

History: Laws 1941, ch. 84, § 48; 1941 Comp., § 72-703; 1953 Comp., § 68-7-3; Laws 1983, ch. 250, § 3; 2005, ch. 276, § 1.

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," see 62-3-3 NMSA 1978.

For denial of service by public utility being petty misdemeanor, see 30-13-2 NMSA 1978.

The 2005 amendment, effective June 17, 2005, provided that in considering public necessity, the commission shall consider the impact the abandonment of service on all customers served, directly or indirectly, by the facilities sought to be abandoned.

The 1983 amendment deleted "regulated" at the end of the catchline and rewrote the text of the section.

ANNOTATIONS

Constitutionality of commission's actions. — Exclusion of an electric utility's interest in a generating facility from its rate base, coupled with the commission's refusal to decertify the facility, did not violate the due process provisions or the takings clauses of the New Mexico and United States constitutions. *Public Serv. Co. v. Public Serv. Comm'n*, 1991-NMSC-083, 112 N.M. 379, 815 P.2d 1169.

Construction of section. — The first part of this section refers to "continuation of service", while the second part addresses "continuation of the service or use of the

facility". Thus, the section is written in the disjunctive to provide not for alternative bases upon which decertification of facilities is authorized, but for distinct factual scenarios giving rise to abandonment. *Public Serv. Co. v. Public Serv. Comm'n*, 1991-NMSC-083, 112 N.M. 379, 815 P.2d 1169.

Jurisdiction of municipal condemnation of public utility. — This section and Section 62-6-12A(4) NMSA 1978 (sale of assets) do not give the commission jurisdiction over municipal condemnations of regulated water and sewer utilities. *United Water N.M., Inc. v. N.M. Pub. Util. Comm'n*, 1996-NMSC-007, 121 N.M. 272, 910 P.2d 906.

Certificate is no longer necessary for abandonment of service; all that is required is the commission's permission and approval. *Gonzales v. Public Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

Application to sale of vacant land. — Sale of 41 vacant acres within 2,564-acre electric utility site was not an "abandonment" of a "facility," and did not require the permission and approval of the commission. *Plains Elec. Generation & Transmission Coop. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-038, 126 N.M. 152, 967 P.2d 827.

Burden of proof. — Utility, as the movant for abandonment, bore the burden to establish the factual predicate upon which the commission could base its decision to grant or deny abandonment. *Public Serv. Co. v. Public Serv. Comm'n*, 1991-NMSC-083, 112 N.M. 379, 815 P.2d 1169.

Utility's assertion that "exclusion from rates of the 26.10% interest in that unit . . . represents a loss in terms of capital costs alone of \$19.8 million a year" fell short of the required showing, where the utility failed to demonstrate with any degree of certainty the overall impact continued regulation had on its financial condition. *Public Serv. Co. v. Public Serv. Comm'n*, 1991-NMSC-083, 112 N.M. 379, 815 P.2d 1169.

Mandamus was the appropriate remedy where the New Mexico public regulation commission refused to follow a nondiscretionary duty. — Where petitioners filed an emergency petition on behalf of the state of New Mexico seeking a writ of mandamus against

the New Mexico public regulation commission (commission) to direct the commission and its individual commissioners to apply the Energy Transition Act (ETA), 62-18-1 to 62-18-23 NMSA 1978, to proceedings related to public service company of New Mexico's (PNM) abandonment of units one and four of the San Juan generating station (San Juan), and where the commission asserted that the ETA did not apply because abandonment proceedings had already begun prior to the ETA's enactment, petition for writ of mandamus was granted because the commission did not have the authority to initiate an abandonment proceeding, and as a matter of law, abandonment proceedings for San Juan units one and four did not effectively begin until PNM filed its application for abandonment, which was after the ETA was enacted. The ETA serves as the statutory scheme that the legislature provided for abandonment proceedings, and therefore the commission had a nondiscretionary obligation to apply the ETA to the San Juan abandonment proceedings. *State ex rel. Egolf v. N.M. Pub. Regulation Comm'n*, 2020-NMSC-018.

Law reviews. — For note, "United Water New Mexico v. New Mexico Public Utility Commission: Why Rules Governing the Condemnation and Municipalization of Water Utilities May Not Apply to Electric Utilities," see 38 Nat. Res. J. 667 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 328.

Discontinuance of entire service, 11 A.L.R. 252.

Discontinuance of one of several different kinds of service, 21 A.L.R. 578.

Right to cut off water supply from one tenant on nonpayment by another, 28 A.L.R. 489.

Duty of public utility to notify patron in advance of temporary suspension of service, 52 A.L.R. 1078.

Damages for wrongfully shutting off gas, 108 A.L.R. 1188.

Right of user of public utility discontinuing use, 112 A.L.R. 230.

Right of utility on expiration of street franchise by limitation to discontinue service, 112 A.L.R. 631.

Right of public utility to discontinue line or branch on ground that it is unprofitable, 10 A.L.R.2d 1121.

Right to shut off one served by common service pipe for nonpayment by another, 19 A.L.R.3d 1227.

Right of public utility to discontinue or refuse service at one address because of refusal to pay for past service rendered at another, 73 A.L.R.3d 1292.

Public utility's right to recover cost of nuclear power plants abandoned before completion, 83 A.L.R.4th 183.

73B C.J.S. Public Utilities §§ 69, 73.

62-9-6. Certificates; application; issuance.

Before any certificate may be issued under Sections 62-9-1 through 62-9-6 New Mexico Statutes Annotated, 1978 Compilation, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be on file in the office of the commission. Every applicant for a certificate shall give such reasonable notice of its application as the commission may require and shall file in the office of the commission such evidence as shall be required by the commission to show that such applicant has received the consent and franchise from the municipality wherein construction and operation is proposed. The commission shall have power, after hearing, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for the construction or operation of a portion only of the contemplated facility, line, plant or system, or extension thereof, or for the partial exercise only of said rights or privilege, and may attach to the exercise of the rights granted by said certificates such terms and conditions in harmony with the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], as amended, as in its judgment the public convenience and necessity may require. Except as otherwise provided in Section 62-9-2 New Mexico Statutes Annotated, 1978 Compilation, in determining whether any certificate shall issue as prayed for, the commission shall give due regard to public convenience and necessity including, but not limited to, any reasonable service agreement between the applicant and another utility and unnecessary duplication and economic waste. Whenever a public utility is engaged or is about to engage in construction or operation without having secured a certificate of public convenience and necessity as required by the provisions of the Public Utility Act, as amended, any interested person may file a complaint with the commission. The commission may, with or without notice, make its order requiring the public utility complained of to cease and desist from such construction or operation until the commission makes and files its decision on said complaint or until the further order of the commission. The commission may after hearing, after reasonable notice, make such order and prescribe such terms and conditions in harmony with the Public Utility Act, as amended, as are just and reasonable.

History: 1953 Comp., § 68-7-4, enacted by Laws 1967, ch. 96, § 8.

Repeals and reenactments. — Laws 1967, ch. 96, § 8, repealed 68-7-4, 1953 Comp., relating to application for and issuance or denial of certificates, and enacted a new section.

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was

repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Provision of non-utility services. — Because electric utility's Certificate of Convenience and Necessity (CCN) contained no specific restrictions regarding non-utility use, the commission incorrectly determined that

the utility violated the CCN when it provided or agreed to provide non-utility services to paper company. *Plains Elec. Generation & Transmission Coop. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-038, 126 N.M. 152, 967 P.2d 827.

62-9-7. Legislative declaration; voluntary service agreements.

A. The legislature declares that the existing scheme of public utility regulation is adequate to exempt voluntary service agreements, as approved and regulated pursuant to the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], from the antitrust laws.

B. In exercising its authority pursuant to Chapter 62, Article 9 NMSA 1978, the commission may, after public hearing upon at least twenty days notice, approve voluntary service agreements between utilities providing similar service proposing the delineation between themselves of one or more service areas in which each shall be entitled to furnish service, if the commission first determines that the proposed delineation of service areas is consistent with the public convenience and necessity and otherwise conforms to the Public Utility Act.

C. Voluntary service agreements that the commission, after public notice and hearing, has previously approved are deemed to comply with Subsection A of this section and to have the same effect as if approved pursuant to Subsection B of this section.

D. Approval of a voluntary service agreement shall not affect the duties and restrictions imposed upon a public utility pursuant to Chapter 62, Article 8 NMSA 1978.

History: Laws 1991, ch. 121, § 1.

Compiler's notes. — Sections 62-9-1 to 62-9-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended

Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ARTICLE 10

Hearings Before the Commission

Sec.	Sec.
62-10-1. Complaints as to rates, etc.; hearing by commission.	62-10-8. Process.
62-10-2. Other hearings by commission.	62-10-9. Witnesses.
62-10-3. Complaint to be filed and become commission record.	62-10-10. Depositions.
62-10-4. Complaint and specifications, served on utility.	62-10-11. Certified copies; evidence.
62-10-5. Hearings to be public and notice of hearing to be given.	62-10-12. Recording orders.
62-10-6. Separate hearings of several complaints.	62-10-13. Fees.
62-10-7. Repealed.	62-10-14. Decisions.
	62-10-15. Repealed.
	62-10-16. Rehearing.

62-10-1. Complaints as to rates, etc.; hearing by commission.

Upon a complaint made and filed by any municipality, or by any person or party affected, that any rate, service regulation, classification, practice or service in effect or proposed to be made effective is in any respect unfair, unreasonable, unjust or inadequate, the commission may proceed, if the commission finds probable cause for said complaint, and without such complaint, the commission, whenever it deems that the public interest or the interest of consumers and investors so requires, may proceed, to hold such hearing as it may deem necessary or appropriate; but no such hearing shall be had without notice, and no order affecting such rates, service regulations, classifications, practice or service complained of shall be entered by the commission without a hearing and notice thereof. Any utility may make complaint as to any matter within the provisions of this act affecting it.

History: Laws 1941, ch. 84, § 50; 1941 Comp., § 72-801; 1953 Comp., § 68-8-1.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For costs in proceedings before commission, see 62-13-3 NMSA 1978.

ANNOTATIONS

Article governs revocation of certificate of convenience and necessity. — If the commission is assumed

to have power to revoke a certificate of public convenience and necessity, the authority as well as the procedure therefor would be found in this article rather than in Sections 62-9-1 and 62-9-4 NMSA 1978 even though a conclusion that the certificate of the service company was null and void, if based upon proper findings, could probably be made in determining the issues in a hearing under Section 62-9-1 NMSA 1978 as a necessary incident of the larger questions presented thereunder. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1974-NMSC-045, 86 N.M. 255, 522 P.2d 802; *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 240, 264 to 275.

Prohibition as means of controlling action of rate-making official, 115 A.L.R. 19, 159 A.L.R. 627.

Representation of another before state public utilities or service commission as practice of law, 13 A.L.R.3d 812. 73B C.J.S. Public Utilities §§ 16, 77, 50, 51, 175.

62-10-2. Other hearings by commission.

The commission may in addition to the hearings specifically provided by this act, conduct such other hearings as may be required in the administration of the powers and duties conferred upon it by this act, after notice as hereafter provided shall be given to the persons interested therein.

History: Laws 1941, ch. 84, § 51; 1941 Comp., § 72-802; 1953 Comp., § 68-8-2.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003.

Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-10-3. Complaint to be filed and become commission record.

Whenever any complaint shall be made as herein provided, the same shall be filed and shall become a part of the permanent records of said commission; and whenever the commission without complaint shall determine that a hearing or investigation is necessary or appropriate, it shall make written specifications of the matters to be considered upon such hearing or investigation, and the same shall be filed and become a part of the permanent records of said commission.

History: Laws 1941, ch. 84, § 52; 1941 Comp., § 72-803; 1953 Comp., § 68-8-3.

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is

ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 267.

62-10-4. Complaint and specifications, served on utility.

Whenever the commission shall determine to hold a hearing or conduct an investigation upon a complaint made and filed as in this article provided, it shall fix a time and place for public hearings

thereupon; and whenever the commission shall determine to conduct a hearing or investigation upon specifications filed by it, it shall fix a time for public hearings of the matter [matters] under investigation; and a copy of the complaint or a copy of the specifications filed by the commission as basis for said hearings shall be served upon the person or utility interested. All hearings shall be held at the offices of the commission in Santa Fe, or at such place in the state as the commission may designate.

History: Laws 1941, ch. 84, § 53; 1941 Comp., § 72-804; 1953 Comp., § 68-8-4.

Bracketed material. — The bracketed material in this section was inserted by the compiler and is not part of the law.

Compiler's notes. — The words "this article" refer to Laws 1941, ch. 84, §§ 50 to 65, compiled as 62-10-1 to 62-10-16 NMSA 1978.

Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108,

Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-10-5. Hearings to be public and notice of hearing to be given.

All hearings, and investigations, held or made by the commission, shall be public; and before proceeding to hold any such hearing or make any such investigation, the commission shall give the utility and the complainant at least twenty days' notice of the time and place when and where such matters will be considered and determined, and all parties shall be entitled to be heard, through themselves or their counsel, and shall have process to enforce the attendance of witnesses. At the hearing held pursuant to such notice, the commission may take such testimony as may be offered or as it may desire.

History: Laws 1941, ch. 84, § 54; 1941 Comp., § 72-805; 1953 Comp., § 68-8-5.

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of

no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Notice requirement only applies to complaint proceedings. — The notice requirement under this section has application only when a proceeding is initiated by a complaint; otherwise, the only notice necessary is such as is required by the commission; 1947-48 Op. Att'y Gen. No. 48-5138.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 80.

62-10-6. Separate hearings of several complaints.

When complaint is made of more than one matter or thing, the commission may, when convenience so requires, order separate hearings thereon, and may thereupon hear and determine the several matters complained of separately and at such times as it may prescribe. In any hearing, proceeding or investigation conducted by the commission, any party may be heard in person or by attorney.

History: Laws 1941, ch. 84, § 55; 1941 Comp., § 72-806; 1953 Comp., § 68-8-6.

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws

2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-10-7. Repealed.

Repeals. — Laws 1998, ch. 108, § 81 repealed 62-10-7 NMSA 1978, as amended by Laws 1985, ch. 116, § 1, relating to hearings, effective January 1, 1999. For provisions

of former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

62-10-8. Process.

The commission, and each commissioner, may issue subpoenas, subpoenas duces tecum and all necessary process in proceedings pending before it, and such processes shall extend to all parts of the state and may be served by any person authorized to serve process out of the district courts of New Mexico.

History: Laws 1941, ch. 84, § 57; 1941 Comp., § 72-808; 1953 Comp., § 68-8-8.

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M.

224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

62-10-9. Witnesses.

The commission and each of the commissioners, for the purposes mentioned in this act, may administer oaths, examine witnesses at any hearing and certify official acts. In case of failure on the part of any person or persons to comply with any lawful order of the commission, or with any subpoena or subpoena duces tecum, or in the case of the refusal of any witness to testify concerning any matter on which he may be interrogated lawfully, any court of record of general jurisdiction or a judge thereof, may on application of the commission or of a commissioner compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such a court or a refusal to testify therein.

History: Laws 1941, ch. 84, § 58; 1941 Comp., § 72-809; 1953 Comp., § 68-8-9.

Cross references. — For contempt proceedings, see 34-1-1 to 34-1-4 NMSA 1978.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See

Quintana v. N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 232.
73B C.J.S. Public Utilities §§ 80, 87.

62-10-10. Depositions.

The commission or any commissioner or any party to the proceedings may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions, and any party as provided by law in civil actions may be required to answer written interrogatories propounded by the commission or any commissioner or any other party to the proceedings.

History: Laws 1941, ch. 84, § 59; 1941 Comp., § 72-810; 1953 Comp., § 68-8-10; Laws 1965, ch. 289, § 12.

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act

are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of

no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For taking depositions, see Rules 1-026 and 1-032 NMRA.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 80.

62-10-11. Certified copies; evidence.

Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary under the official seal of the commission to be true copies of the original shall be evidence in like manner as the originals, in all matters before the commission and in the courts of this state.

History: Laws 1941, ch. 84, § 60; 1941 Comp., § 72-811; 1953 Comp., § 68-8-11.

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M.

224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 269.
73B C.J.S. Public Utilities §§ 82 to 85.

62-10-12. Recording orders.

Every order, finding, authorization or certificate issued or approved by the commission under any provisions of this act shall be in writing and entered on the records of the commission. A certificate under the seal of the commission that any such order, finding, authorization or certificate has not been stayed, suspended or revoked shall be received as evidence in any proceedings as to the facts therein stated.

History: Laws 1941, ch. 84, § 61; 1941 Comp., § 72-812; 1953 Comp., § 68-8-12.

Compiler's notes. — For the meaning of "this act", see 62-5-9 NMSA 1978 and notes thereto.

Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101

(1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 274.

73B C.J.S. Public Utilities §§ 89 to 92.

62-10-13. Fees.

Witnesses who are summoned before the commission shall be paid the same fees and mileage as are paid to witnesses in the courts of record of general jurisdiction. Witnesses whose depositions are taken pursuant to the provisions of this act, and the officer taking the same, shall be entitled to the same fees as are paid for like services in such courts.

History: Laws 1941, ch. 84, § 62; 1941 Comp., § 72-813; 1953 Comp., § 68-8-13.

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by

Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For fees and mileage as paid to witnesses in district courts, see 38-6-4 NMSA 1978.

For fees for taking depositions, see 14-12-19B, 39-2-8 NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality and construction of statute imposing upon public service corporation expense of investigation of its affairs, 101 A.L.R. 197.

73B C.J.S. Public Utilities § 80.

62-10-14. Decisions.

After the conclusion of any hearing the commission shall make and file its findings and order. The findings of fact shall consist only of such ultimate facts as are necessary to determine the controverted questions presented by the proceeding. Such findings shall be separately stated and numbered, and each thereof shall state briefly and plainly an ultimate fact necessary to determine a controverted question; and there shall be such a finding of fact as to each of the controverted questions presented by the proceeding. The order of the commission shall be based upon said findings of fact, and a copy of the findings of fact and of the order, certified under the seal of the commission, shall be served upon the person against whom it runs, or his attorney, and notice thereof shall be given to the other parties to the proceeding or their attorneys. Said order shall take effect and become operative thirty days after the service thereof, unless otherwise provided. If an order cannot in the judgment of the commission be complied with within thirty days, the commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply therewith, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

History: Laws 1941, ch. 84, § 63; 1941 Comp., § 72-814; 1953 Comp., § 68-8-14.

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Requiring exhaustion of administrative remedies is constitutional. — The requirement of the Public Utility Act that a person first exhaust his administrative remedy before resorting to the courts does not violate N.M. Const., art. VI, § 13, granting general jurisdiction to the district courts except as elsewhere limited in such constitution. *Smith v. Southern Union Gas Co.*, 1954-NMSC-033, 58 N.M. 197, 269 P.2d 745.

This section requires only a finding of an ultimate fact, and where that fact is found, the supreme court cannot interpret it to require any additional basis for the commission's order. *International Minerals & Chem. Corp. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

This section requires that the commission find only ultimate facts and does not require it to give reasons for its decision. The ultimate fact is the logical result of the proofs reached by reasoning from the evident facts. It is a conclusion of fact. *International Minerals & Chem. Corp.*

v. N.M. Pub. Serv. Comm'n, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

Unnecessary but erroneous findings of fact are not grounds for reversal. — Erroneous findings of fact, unnecessary to support the decision of a court, are not grounds for reversal. *International Minerals & Chem. Corp. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

Failure to number findings not grounds for reversal. — That the findings were unnumbered would not justify a reversal on the grounds that the requirements of this section were not followed. *International Minerals & Chem. Corp. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

Moving party has burden of proof. — Although this section does not specifically place any burden of proof on the complainant, the courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof. *International Minerals & Chem. Corp. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

Burden of proving rate discrimination not met. — Where commission found that no unreasonable discrimination existed between rates charged to complainant's classification of service and to respondent's classifications of service, complainant failed to sustain the burden of proving unlawful or unreasonable discrimination as to rates charged to various members of its own classification. *International Minerals & Chem. Corp. v. N.M. Pub. Serv. Comm'n*, 1970-NMSC-032, 81 N.M. 280, 466 P.2d 557.

Commission is not bound by opinions of experts so long as the commission's ultimate decision is supported by substantial evidence. *Attorney Gen. v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-081, 101 N.M. 549, 685 P.2d 957.

Commission is only required to find ultimate fact: it is not required to give reasons for its decision or to make a finding that is not an ultimate finding. *Attorney Gen. v.*

N.M. Pub. Serv. Comm'n, 1984-NMSC-081, 101 N.M. 549, 685 P.2d 957.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

62-10-15. Repealed.

Repeals. — Laws 1998, ch. 108, § 81 repealed 62-10-15 NMSA 1978, as enacted by Laws 1941, ch. 84, § 64, relating to record of proceedings, effective January 1, 1999. For

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 273, 274.

Necessity of some evidence at hearing to support decision of commission, 123 A.L.R. 1349.

73B C.J.S. Public Utilities §§ 88 to 92.

provisions of former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

62-10-16. Rehearing.

After an order or decision has been made by the commission, any party to the proceedings, may within thirty days after the entry of the order or decision apply for a rehearing in respect of any matters determined in said proceedings and specified in the application for rehearing, and the commission may grant and hold such rehearing on said matters. The commission shall either grant or refuse an application for rehearing within twenty days after the application therefor is filed in the office of the commission; and a failure by the commission to act upon such application within that period shall be deemed a refusal thereof. If the application be granted, the commission's order shall be deemed vacated, and the commission shall enter a new order after the rehearing shall have been concluded.

History: Laws 1941, ch. 84, § 65; 1941 Comp., § 72-816; 1953 Comp., § 68-8-16.

Compiler's notes. — Sections 62-10-1 to 62-10-6, 62-10-8 to 62-10-14 and 62-10-16 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of

no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Motion for rehearing not acted upon is deemed refused. — A timely motion for rehearing, filed in accordance with this section but not acted upon by the commission within 20 days, is deemed refused. *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of public service corporation to judicial relief from contract rates which have become inadequate, 10 A.L.R. 1335.

73B C.J.S. Public Utilities § 96.

ARTICLE 11

Review of Commission Orders

Sec.
62-11-1. Right of appeal.
62-11-2. Notice to the commission.
62-11-3. Appeal on the record.
62-11-4. Burden of showing that the order is unreasonable or unlawful.

Sec.
62-11-5. Decision on appeal.
62-11-6. Appeals; supreme court may stay or suspend commission's order.
62-11-7. Repealed.

62-11-1. Right of appeal.

Any party to any proceeding before the commission may file a notice of appeal in the supreme court asking for a review of the commission's final orders. If an application for rehearing has been filed, a notice of appeal must be filed within thirty days after the application for rehearing has been refused or deemed refused because of the commission's failure to act within the time specified in Section 62-10-16 NMSA 1978. If an application for rehearing has not been filed, a notice of appeal must be filed within thirty days after the entry of the commission's final order. Every notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken. Any person

whose rights may be directly affected by the appeal may appear and become a party, or the supreme court may, upon proper notice, order any person to be joined as a party.

History: Laws 1941, ch. 84, § 66; 1941 Comp., § 72-901; 1953 Comp., § 68-9-1; Laws 1965, ch. 289, § 14; 1982, ch. 109, § 11; 1993, ch. 282, § 38.

Compiler's notes. — Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, made minor stylistic changes in the first and second sentences, and deleted "New Mexico public service" preceding "commission" in the next-to-last sentence.

ANNOTATIONS

Requiring exhaustion of remedies is constitutional.

— The requirement of the Public Utility Act that a person first exhaust his administrative remedy before resorting to the courts does not violate N.M. Const., art. VI, § 13, granting general jurisdiction to the district courts except as elsewhere limited in such constitution. *Smith v. Southern Union Gas Co.*, 1954-NMSC-033, 58 N.M. 197, 269 P.2d 745.

Section liberally applied in determining standing for review. — The language "[a]ny party to any proceeding before the commission" is broad and requires liberal application in determining standing for review pursuant to this section. *Community Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1983-NMSC-026, 99 N.M. 493, 660 P.2d 583.

Courts have jurisdiction to vacate unlawful administrative order. — The statutory provisions for limited review of an order of a commission by the district court do not oust the courts of jurisdiction to annul and vacate a final administrative order as unlawful. *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

Complete administrative remedy for testing rates is provided. — The Public Utility Act envelops the commission with an aura of broad power and jurisdiction to determine just and reasonable rates and sets up a complete

remedy within the framework of the act for testing their propriety and reasonableness. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Action will be dismissed if remedies have not been exhausted. — Where plaintiff brought action to enjoin commission from enforcing new gas rates and to recover amounts paid without waiting for final determination in pending statutory review proceeding, complaint was properly dismissed because plaintiff failed to exhaust administrative remedies. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Standard of review for appeal is whether there is substantial evidence in the record as a whole to support the agency's decision. *Gonzales v. Public Serv. Comm'n*, 1985-NMSC-038, 102 N.M. 529, 697 P.2d 948.

Review limited. — On appeals from administrative bodies the questions to be answered by the court are questions of law and are restricted to whether the administrative body acted fraudulently, arbitrarily or capriciously, whether the order was supported by substantial evidence and, generally, whether the action of the administrative body was within the scope of its authority. *Maestas v. N.M. Pub. Serv. Comm'n*, 1973-NMSC-096, 85 N.M. 571, 514 P.2d 847; *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

Section 62-12-2 applicable. — Where it is alleged that the public regulation commission is acting outside the scope of its jurisdiction or refusing to perform under the Public Utility Act, Section 62-12-2 NMSA 1978 is applicable. *City of Sunland Park v. N.M. Pub. Regulation Comm'n*, 2004-NMCA-024, 135 N.M. 143, 85 P.3d 267, cert. denied, 2004-NMCERT-002, 135 N.M. 169, 86 P.3d 47.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For comment, "Regulation of Electric Utilities and Affiliated Coal Companies - Determining Reasonable Expenses," see 26 Nat. Res. J. 851 (1986).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 276 to 291.

73B C.J.S. Public Utilities §§ 96, 101 to 138.

62-11-2. Notice to the commission.

Upon the filing of a notice of appeal, the appellant shall cause a copy thereof to be served upon the commission and parties of record in the proceeding before the commission in the manner prescribed by the Rules of Appellate Procedure for Civil Cases. Within thirty days after service of the notice of appeal or such further time as the supreme court for good cause may specify, the commission shall certify to the supreme court the record of the testimony taken before the commission and all exhibits offered or received in evidence at the hearing before the commission, and all pleadings, findings, conclusions, orders and opinions, or certified copies thereof, made and entered in, or in connection with, the hearing before the commission; provided, however, that the parties and the commission may stipulate that a specified portion only of the testimony taken at the hearing before the commission shall be certified to the supreme court for review on appeal.

History: Laws 1941, ch. 84, § 67; 1941 Comp., § 72-902; 1953 Comp., § 68-9-2; Laws 1965, ch. 289, § 15; 1982, ch. 109, § 12.

Compiler's notes. — Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108,

Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-11-3. Appeal on the record.

The appeal shall be heard on the record made before the commission, and the supreme court shall not permit the introduction of new evidence addressed to any of the issues presented at the hearing before the commission.

History: Laws 1941, ch. 84, § 68; 1941 Comp., § 72-903; 1953 Comp., § 68-9-3; Laws 1965, ch. 289, § 16; 1982, ch. 109, § 13.

Compiler's notes. — Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003,

Cross references. — For service of process, see Rule 1-004 NMRA.

For Rules of Appellate Procedure, see Rule 12-101 NMRA et seq.

ANNOTATIONS

Law reviews. — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 101 to 117.

Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Administrative decisions. — In review of administrative orders, additional evidence cannot be introduced. *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 126 to 138.

62-11-4. Burden of showing that the order is unreasonable or unlawful.

The burden shall be on the party appealing to show that the order appealed from is unreasonable, or unlawful.

History: Laws 1941, ch. 84, § 69; 1941 Comp., § 72-904; 1953 Comp., § 68-9-4; Laws 1965, ch. 289, § 17.

Compiler's notes. — Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

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Standard of review. — On appeal, the court, viewing the evidence in the light most favorable to the order appealed from, determines whether the order was supported by substantial evidence, was neither arbitrary nor capricious, and was within the commission's scope of authority. *Plains Elec. Generation & Transmission Coop. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-038, 126 N.M. 152, 967 P.2d 827.

Grounds required for reversal. — The party challenging a commission decision must show that agency action falls within one of the oft-mentioned grounds for reversal, including: whether the decision is arbitrary and capricious; whether it is supported by substantial evidence; and whether it represents an abuse of the agency's

discretion by being outside the scope of the agency's authority, clear error, or violative of due process. *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28.

Burden of proving construction was not commenced in time. — The burden was on petitioners-landowners, as the moving parties before the commission, to demonstrate by substantial evidence, and thereby prove to the commission, that electrical cooperative failed to commence construction of a transmission line and related facilities within the time prescribed by Section 62-9-4 NMSA 1978. *Lone Mountain Cattle Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-008, 83 N.M. 465, 493 P.2d 950.

When commission's construction of certificate and statutes is binding. — The commission's construction of the certificate issued by it and the statutes governing its operation was binding on review, unless this construction was unreasonable or unlawful. *Lone Mountain Cattle Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-008, 83 N.M. 465, 493 P.2d 950.

Utility's request for proposal process was not arbitrary or capricious. — Where the public service company of New Mexico (PNM) submitted an application for the public regulation commission (PRC) to approve its renewable energy procurement plan for the year 2018, and where, in its application, PNM sought to demonstrate its compliance with the Renewable Energy Act, 62-16-1 to -10 NMSA 1978, requirements and obtain the PRC's approval of renewable energy procurements, the PRC's approval of PNM's solar energy procurement plan was not unreasonable or

unlawful, because PNM's request for proposal (RFP) gave all bidders a fair opportunity to participate and compete for PNM's selection, and evidence in the record demonstrates that the challenged aspects of PNM's RFP were consistent with industry standards. *N.M. Indus. Energy Comm'n v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-015.

Public Regulation Commission's summary fact-finding procedure denied qualifying facility due process. — In a case that arose under the federal Public Utility Regulatory Policies Act of 1978 (PURPA), which was designed to encourage the development of small power production facilities in order to diversify the nation's energy sources and thereby reduce the demand for traditional fossil fuels, where appellant filed a petition with the New Mexico public regulation commission (PRC), contending that it is a "qualifying facility" under PURPA and requested that the PRC enter an order declaring that Lea county electric is obligated under PURPA to purchase the energy and capacity that appellant produces and determine the proper "avoided costs" Lea county electric is required to pay appellant for its energy and capacity,

and where the PRC determined that it would process appellant's filing as a complaint subject to the formal complaint process set forth in its rules of procedure and not as a petition for a declaratory order, and where the PRC further summarily dismissed the complaint with prejudice, finding that the affidavits and supporting documentation constituted substantial evidence that Lea county electric transferred its mandatory purchase obligation to another electric utility which served as Lea county electric's "full-requirements" supplier, the New Mexico supreme court vacated and annulled the PRC's final order, because the summary fact-finding procedure employed by the PRC violated due process when it precluded appellant from presenting evidence and developing a record on the disputed full-requirements issue. The PRC's decision was also not supported by substantial evidence, and was therefore arbitrary, capricious, or an abuse of discretion. *D. Resolute Wind 1 LLC v. N.M. Pub. Regul. Comm'n*, 2022-NMSC-011.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 126 to 128.

62-11-5. Decision on appeal.

The supreme court shall have no power to modify the action or order appealed from, but shall either affirm or annul and vacate the same. The supreme court shall vacate and annul the order complained of if it is made to appear to the satisfaction of the court that the order is unreasonable or unlawful. Proceedings in the supreme court shall be governed by the provisions of this act and by the Rules of Appellate Procedure for Civil Cases promulgated by the supreme court of New Mexico.

History: Laws 1941, ch. 84, § 70; 1941 Comp., § 72-905; 1953 Comp., § 68-9-5; Laws 1982, ch. 109, § 14.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For Rules of Appellate Procedure, see Rule 12-101 NMRA et seq.

ANNOTATIONS

Entire order must be annulled if part is unlawful.

— Where the court finds part of the order of the commission to be unreasonable and unlawful, it must annul the entire order. The court has no power to modify the order of the commission. *Moyston v. N.M. Pub. Serv. Comm'n*, 1966-NMSC-062, 76 N.M. 146, 412 P.2d 840.

Supreme court is limited to affirming or reversing lower court. — Because of the form of this section (prior to the 1982 amendment), supreme court was limited in its disposition of cause to affirming or reversing the lower court, and the cause cannot be remanded to permit the commission to supply necessary findings. *N.M. Elec. Serv. Co. v. Lea Cnty. Elec. Coop.*, 1966-NMSC-046, 76 N.M. 434, 415 P.2d 556, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433 (1966).

Court is limited in its review to determining whether the order of the commission was unreasonable and/or unlawful, whether it was supported by substantial evidence and, generally, whether the action of the commission was within the scope of its authority. *Llano, Inc. v. S. Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646.

On appeals from administrative bodies the questions to be answered by the court are questions of law and are restricted to whether the administrative body acted fraudulently, arbitrarily or capriciously, whether the order was supported by substantial evidence and, generally, whether the action of the administrative body was within the scope of its authority. The district court may not substitute its judgment for that of the administrative body. *Maestas v. N.M. Pub. Serv. Comm'n*, 1973-NMSC-096, 85 N.M. 571, 514 P.2d 847; *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, 75 N.M. 7, 399 P.2d 646; *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1979-NMSC-042, 92 N.M. 721, 594 P.2d 1177.

Commission decision not upheld without substantial evidence. — Although every inference is to be drawn in support of the commission's decision, a reviewing court may not uphold a commission's decision which is not supported by substantial evidence. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1979-NMSC-042, 92 N.M. 721, 594 P.2d 1177.

Questions of fact are for commission, not court. — Whether or not the construction had been commenced on a certain date is a question of fact to be determined by the commission. *Lone Mountain Cattle Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-008, 83 N.M. 465, 493 P.2d 950.

When commission's construction of certificate and statute is binding. — The commission's construction of the certificate issued by it and the statutes governing its operation was binding on review, unless this construction was unreasonable or unlawful. *Lone Mountain Cattle Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-008, 83 N.M. 465, 493 P.2d 950.

Once commission's order is annulled and vacated, a rate case is in the same posture it was in before the original decision was rendered: the commission may hold additional hearings and take additional testimony just as if the vacated order had never been entered; however, because the proposed rates may be put into effect after expiration of the initial nine-month period, the commission will have every reason to act expeditiously to enter new findings based on substantial evidence. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1979-NMSC-042, 92 N.M. 721, 594 P.2d 1177.

Regulation held neither arbitrary nor capricious. — The question of a potential for abuse in a regulation allowing company to adjust consumers' rates relative to change in the company's cost prior to the approval by the commission in that the company could negotiate contracts with its subsidiaries who supply 26% of its natural gas at favorable rates, and thereby accrue hidden profits, was a question of fact for the commission to decide, and as the commission's findings were supported by substantial evidence, this regulation was neither arbitrary nor capricious. *Maestas v. N.M. Pub. Serv. Comm'n*, 1973-NMSC-096, 85 N.M. 571, 514 P.2d 847.

Commission's finding of fact held supported by substantial evidence. — Considering petitioner's burden of proof, the nature and extent of the evidence adduced and the qualifications of the commission in knowing and understanding what is meant by "surveys" and "construction," in the sense in which these terms are used in the construction of power transmission lines and related facilities, the commission's finding of fact was supported by substantial evidence, and it is not the province of the court to substitute its judgment for that of the commission. *Lone Mountain Cattle Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-008, 83 N.M. 465, 493 P.2d 950.

Commission's order held unsupported by substantial evidence. — Where gas company seeking rate increase proposed to trend the general plant account items by using a nationally recognized index, but the commission instead inserted its own method - to simply use the untrended original cost, although the witness who strongly supported this approach admitted that he did not know whether this would accurately establish the reproduction cost of the items, the court held the commission's order was unreasonable, being unsupported by

substantial evidence. *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, 84 N.M. 330, 503 P.2d 310.

Commission's establishment of a two-tiered rate plan that allowed residential customers to elect between a higher customer access fee combined with a lower distribution charge per therm, or choose a lower customer access fee combined with a higher distribution charge was not supported by the evidence. *Attorney Gen. v. N.M. Pub. Util. Comm'n*, 2000-NMSC-008, 128 N.M. 747, 998 P.2d 1198.

Commission's order in a utility-rate proceeding was vacated and remanded because its decision on the disallowance of gas company's actual tax expenses was arbitrary, its determination of zero cash working capital was lacking a basis in substantial evidence and the amount of its award for aircraft expenses was unsupported by substantial evidence. *Zia Natural Gas Co. v. N.M. Pub. Util. Comm'n*, 2000-NMSC-011, 128 N.M. 728, 998 P.2d 564.

In its final order regarding a gas utility's requested rate increase, the commission's denial of recovery of losses on reacquired debt, the denial of the opportunity for the utility to recover reservation fees in a separate proceeding, the denial of certain settlement expenses and rate case expenses, and the dramatic increase in the residential access charge were not supported by substantial evidence. *PNM Gas Servs. v. N.M. Pub. Util. Comm'n*, 2000-NMSC-012, 129 N.M. 1, 1 P.3d 383.

Factors considered in rate hearing. *Public Serv. Co. v. N.M. Pub. Serv. Comm'n*, 1979-NMSC-042, 92 N.M. 721, 594 P.2d 1177.

Departure from prior practice without notice. — A regulatory body cannot, without prior notice, abruptly depart from past practice on which the regulatee has relied and impose a retroactive refund requirement upon the regulatee. However, once notice was given, nothing prevented the commission from adopting a new regulatory practice and applying it prospectively; if the regulatee chose not to comply, it did so at its own peril. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-032, 115 N.M. 678, 858 P.2d 54.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities §§ 125 to 128.

62-11-6. Appeals; supreme court may stay or suspend commission's order.

The pendency of an appeal shall not of itself stay or suspend the operation of the order of the commission, but, during the pendency of such proceedings, the supreme court in its discretion may stay or suspend, in whole or in part, the operation of the commission's order on such terms as it deems just and in accordance with the practice of courts exercising equity jurisdiction. If the supreme court stays or suspends the operation of an order of the commission, pending a review of the order, the court may require the party seeking the stay or suspension to secure the other parties against loss due to the delay in the enforcement of the order, in case the order on appeal is affirmed, in such amount and in such form as the supreme court shall direct.

History: Laws 1941, ch. 84, § 71; 1941 Comp., § 72-906; 1953 Comp., § 68-9-6; Laws 1982, ch. 109, § 15; 1983, ch. 250, § 4.

Compiler's notes. — Sections 62-11-1 to 62-11-6 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 6 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a

repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," see 62-3-3 NMSA 1978.

The 1983 amendment inserted "stay or suspend commission's order" at the end of the catchline and substituted

"If the supreme court stays or suspends the operation of an order of the commission, pending a review of the order, the court may require the party seeking the stay or suspension to secure" for "Any party shall have the right to secure from the supreme court an order suspending or staying the operation of an order of the commission, pending a review of such order, by securing" in the second sentence.

ANNOTATIONS

A party looking to stay a public regulation commission final order must seek a stay from the commission before requesting a stay from the New Mexico supreme court. — Where El Paso electric company (El Paso electric) submitted its 2018 annual renewable energy plan to the New Mexico public regulation commission (commission), in which El Paso electric sought a ten-year extension of its agreement with the Camino Real energy facility to purchase renewable energy certificates at a price of \$30 per megawatt hour of renewable energy, which doubled the \$15 per megawatt hour price for the certificates under its expiring agreement with the Camino Real facility, and where the commission issued a final order approving the proposal, and where the city of Las Cruces (city) filed a notice of appeal with the New Mexico supreme court seeking review of the commission's final order and requesting that the court stay the portion of the commission's order that approved El Paso electric's agreement with the Camino Real facility, the city was required

to first seek a stay from the commission, because a party is required to pursue relief from an administrative agency, where available, before seeking redress from the courts, which allows for the development of a complete factual record and preserves the New Mexico supreme court's role as a court of review. *City of Las Cruces v. N.M. Pub. Regulation Comm'n*, 2020-NMSC-016.

The New Mexico public regulation commission retains jurisdiction to act on a stay request following a final order. — Where El Paso electric company (El Paso electric) submitted its 2018 annual renewable energy plan to the New Mexico public regulation commission (commission), in which El Paso electric sought a ten-year extension of its agreement with the Camino Real energy facility to purchase renewable energy certificates at a price of \$30 per megawatt hour of renewable energy, which doubled the \$15 per megawatt hour price for the certificates under its expiring agreement with the Camino Real facility, and where the commission issued a final order approving the proposal, the commission was within its authority to grant the city of Las Cruces' motion for stay despite a pending appeal, because the commission retains jurisdiction to act on a stay request following a final order. *City of Las Cruces v. N.M. Pub. Regulation Comm'n*, 2020-NMSC-016.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

62-11-7. Repealed.

Repeals. — Laws 1982, ch. 109, § 16, repealed 62-11-7 NMSA 1978, relating to appeals to the supreme court. For present provisions, see 62-11-1 to 62-11-6 NMSA 1978.

Laws 1982, ch. 109, contained no effective date provision, but was enacted at the session which adjourned on February 18, 1982. See N.M. Const., art. IV, § 23.

ARTICLE 12

Enforcement of Orders and Duties

Sec.

- 62-12-1. Mandamus; injunction; utilities.
- 62-12-2. Actions against commission.
- 62-12-3. Actions preferred.
- 62-12-4. Violation of orders.

Sec.

- 62-12-5. Separate offenses.
- 62-12-6. Penalties cumulative.
- 62-12-7. Action to recover penalties.

62-12-1. Mandamus; injunction; utilities.

Whenever the commission shall be of the opinion that any person or utility is failing or omitting or about to fail or omit to do anything required of it by this act or by any order of the commission, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of this act or of any order of the commission, it may direct the attorney general of New Mexico to commence an action or proceeding in the district court in and for the county of Santa Fe, or in the district court of the county in which the complaint or controversy arose, in the name of the state of New Mexico for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunction. The attorney general of New Mexico shall thereupon begin such action or proceeding by petition to such court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding thirty days after the service of the copy of the petition, within which the public utility or person complained of must plead, and in the meantime said public utility or person may for good cause shown be restrained. In case of default, the court shall immediately inquire into the facts and circumstances of the case. Such corporations or persons as the court may deem necessary or

proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition, or in such modified or other form as will afford appropriate relief. An appeal may be taken as in other civil actions.

History: Laws 1941, ch. 84, § 73; 1941 Comp., § 72-1001; 1953 Comp., § 68-10-1.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003. Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For mandamus, see 44-2-1 to 44-2-14 NMSA 1978.

For injunctions, see Rules 1-065 and 1-066 NMRA.

For the Rules of Appellate Procedure, see Rule 12-101 NMRA et seq.

ANNOTATIONS

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52 Am. Jur. 2d Mandamus §§ 108 to 110; 64 Am. Jur. 2d Public Utilities §§ 30, 275, 277, 278.

Joinder or representation of several claimants in action to recover overcharge, 1 A.L.R.2d 160.

Adequacy, as regards right to injunction, of other remedy for review of order fixing utility rates, 8 A.L.R.2d 839.

Propriety of injunctive relief against diversion of water by municipal corporation or public utility, 42 A.L.R.3d 426.

73B C.J.S. Public Utilities § 59.

62-12-2. Actions against commission.

In case the commission or its members shall undertake to act in excess of its jurisdiction and authority conferred under this act, or without jurisdiction; or in case the said commission or its members shall undertake to exercise rights or privileges not conferred upon it by this act or by law; or in case the said commission or its members shall fail or refuse in the performance of any duties or obligations imposed upon it by the terms of this act, then the person interested or whose rights are affected may bring suit by mandamus, prohibition, injunction or other appropriate remedy against the said commission in its statutory name in this act provided, to compel performance of the duties and obligations imposed upon said commission by this act, or to restrain said commission and its members from the exercise of jurisdiction not by this act conferred. Consent of the state is hereby expressly given to the maintenance of such suits against said commission. Any such action shall be brought against said commission in the district court of Santa Fe county, New Mexico, or in the district court of the county in which the complaint or controversy arose. Any judgment or decree entered against the commission shall be binding upon the commission and each and every member thereof.

History: Laws 1941, ch. 84, § 74; 1941 Comp., § 72-1002; 1953 Comp., § 68-10-2.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003. Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For prohibition, see N.M. Const., art. VI, § 13.

For mandamus, see 44-2-1 to 44-2-14 NMSA 1978.

For injunctions, see Rules 1-065 and 1-066 NMRA.

ANNOTATIONS

Equity has inherent power to restrain acts beyond commission's jurisdiction. — The power to restrain the exercise by the commission of acts entirely beyond or in excess of its jurisdiction inheres in a court of equity, and a mere declaration of the power in this section adds no new strength to the power. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Complete administrative remedy for testing rates is provided. — The Public Utility Act envelops the commission with an aura of broad power and jurisdiction to determine just and reasonable rates and sets up a complete remedy within the framework of the act for testing their propriety and reasonableness. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Increasing contract rate is not in excess of commission's jurisdiction. — Where the commission had entered an order authorizing a public utility to enter into a contract and to continue to charge the gas rate therein specified until further order and on the ex parte petition of the utility subsequently entered an interlocutory order making a rate increase to be effective until the commission could hold a hearing to determine and set a new and proper rate, the commission was moving strictly in conformity with the act creating it to determine one of the major questions submitted to its jurisdiction - a question of rates. *Potash Co. of Am. v. N.M. Pub. Serv. Comm'n*, 1956-NMSC-091, 62 N.M. 1, 303 P.2d 908.

Section applicable. — Where it is alleged that the public regulation commission is acting outside the scope

of its jurisdiction or refusing to perform under the Public Utility Act, this section is applicable. *City of Sunland Park v. N.M. Pub. Regulation Comm'n*, 2004-NMCA-024, 135 N.M. 143, 85 P.3d 267, cert. denied, 2004-NMCERT-002, 135 N.M. 169, 86 P.3d 47.

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 278.

Prohibition as means of controlling action of ratemaking officials, 115 A.L.R. 19, 159 A.L.R. 627.

73B C.J.S. Public Utilities §§ 66, 129-138.

62-12-3. Actions preferred.

All actions and proceedings under this act, and all actions or proceedings to which the commission or the state of New Mexico may be a party, and in which any question arises under this act, or under or concerning any order or decision of the commission, may be preferred over all other civil causes except election causes, irrespective of position on the calendar.

History: Laws 1941, ch. 84, § 75; 1941 Comp., § 72-1003; 1953 Comp., § 68-10-3.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M.

224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For assignment of cases for trial, see Rule 1-040 NMRA.

ANNOTATIONS

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

62-12-4. Violation of orders.

Any person or corporation which violates any provision of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] or which fails, omits or neglects to obey, observe or comply with any lawful order, or any part or provision thereof, of the commission is subject to a penalty of not less than one hundred dollars (\$100) nor more than one hundred thousand dollars (\$100,000) for each offense.

History: Laws 1941, ch. 84, § 76; 1941 Comp., § 72-1004; 1953 Comp., § 68-10-4; Laws 1983, ch. 250, § 5; 1993, ch. 220, § 2.

Compiler's notes. — Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time,

however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," see 62-3-3 NMSA 1978.

The 1993 amendment, effective June 18, 1993, substituted "the Public Utility Act" for "this act" near the beginning and "one hundred thousand dollars (\$100,000)" for "ten thousand dollars (\$10,000)" near the end of the section.

The 1983 amendment substituted "ten thousand dollars (\$10,000)" for "one thousand dollars."

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Imprisonment for overcharge by public utility, 40 A.L.R. 82.

62-12-5. Separate offenses.

Every violation of the provisions of this act or of any lawful order of the commission, or any part or portion thereof by any corporation or person is a separate and distinct offense, and in case of a continuing violation after a first conviction each day's continuance thereof shall be deemed to be a separate and distinct offense.

History: Laws 1941, ch. 84, § 77; 1941 Comp., § 72-1005; 1953 Comp., § 68-10-5.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws

2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-12-6. Penalties cumulative.

All penalties accruing under this act shall be cumulative, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility or any officer, director, agent or employee thereof or any other corporation or person.

History: Laws 1941, ch. 84, § 78; 1941 Comp., § 72-1006; 1953 Comp., § 68-10-6.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M.

224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Law reviews. — For note, "The Public Service Commission: A Legal Analysis of an Administrative System," see 3 N.M.L. Rev. 184 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 59.

62-12-7. Action to recover penalties.

Actions to recover penalties under this act shall be brought in the name of the state of New Mexico in the district court of Santa Fe county.

History: Laws 1941, ch. 84, § 79; 1941 Comp., § 72-1007; 1953 Comp., § 68-10-7.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-12-1 to 62-12-7 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 12 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is

ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

ARTICLE 13

Public Utility Act Miscellaneous Provisions

Sec.

62-13-1. Short title.

62-13-2. Fees.

62-13-2.1. Refund of fees.

62-13-3. Costs.

62-13-4. Interstate commerce not affected.

62-13-5. Mortgages and deeds of trust; execution by corporations distributing electric energy, natural gas and providing telephone and telegraph services.

62-13-6. Mortgages and deeds of trust; notice of lien; after-acquired property.

62-13-7. Prior mortgages and deeds of trust not impaired.

Sec.

62-13-8. Filing with the secretary of state.

62-13-9. Refiling instruments with any county clerk.

62-13-10. Fees.

62-13-11. Recording notice in office of county clerk.

62-13-12. Effect of filing with the secretary of state; duration of filing.

62-13-12.1. Effect of instruments previously filed.

62-13-13. Deposits; interest.

62-13-13.1. Renewable energy distributed generation facilities; owners and operators not public utilities.

- Sec.
62-13-12. Interconnected customers; utility cost recovery.
62-13-13. Renewable energy-related services; powers and duties of commission.
62-13-14. Prohibition against water utilities imposing additional standby charges on owners of structures containing automatic fire protection sprinkler systems.

- Sec.
62-13-15. Appointment of receiver.
62-13-16. Requiring the hiring of apprentices for the construction of facilities that generate electricity.

62-13-1. Short title.

Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978 may be cited as the "Public Utility Act".

History: Laws 1941, ch. 84, § 80; 1941 Comp., § 72-1101; 1953 Comp., § 68-11-1; 1993, ch. 220, § 1; 1993, ch. 282, § 39; 1993, ch. 351, § 1.

Compiler's notes. — Chapter 62, Article 3A, the Electric Utility industry Restructuring Act of 1999, enacted by Laws 1999, ch. 294, was not enacted as a part of the Public Utility Law. Presently the Public Utility Act consists of Chapter 62, Articles 1 to 3, 4 to 6, and 8 to 13 NMSA 1978.

Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of

no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 220, § 1, effective June 18, 1993, Laws 1993, ch. 282, § 39, effective June 18, 1993 and Laws 1993, ch. 351, § 1, effective July 1, 1993, which rewrote the section, which read: "This act shall be known, and cited and referred to, as the Public Utility Act". The section is set out as amended by Laws 1993, ch. 351, § 1. See 12-1-8 NMSA 1978.

ANNOTATIONS

Law reviews. — For article, "Cost of Service Indexing: An Analysis of New Mexico's Experiment in Public Utility Regulation," see 9 N.M.L. Rev. 287 (1979).

For note, "Preemption - Atomic Energy," see 24 Nat. Res. J. 761 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 13.

73B C.J.S. Public Utilities § 63.

62-13-2. Fees.

The commission shall collect the following fees, which shall be remitted to the state treasurer not later than the day following receipt:

- A. for filing any rate schedule, service rule or regulation or sample form, or amendment thereto, one dollar (\$1.00);
- B. for filing each application, petition or complaint, twenty-five dollars (\$25.00);
- C. for copies of papers, testimony and records, the reasonable cost of such copies as the commission may provide from time to time by rule; and
- D. for certifying any copy of any paper, testimony or record, two dollars (\$2.00).

History: 1953 Comp., § 68-11-2.1, enacted by Laws 1957, ch. 25, § 2; 1965, ch. 289, § 19; 1993, ch. 282, § 40.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

The 1993 amendment, effective June 18, 1993, in the introductory language, deleted "New Mexico

public service" preceding "commission" and made stylistic changes; added the subsection designations; and added "; and" at the end of Subsection C.

ANNOTATIONS

Fee payable for each schedule, not each instrument. — The fee provided for is payable for each rate schedule filed even though all schedules filed under rules of the commission may be included in one instrument. 1941-42 Op. Att'y Gen. No. 41-3939 (rendered under former statute).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality and construction of statute imposing upon public service corporation expense of investigation of its affairs, 101 A.L.R. 197.

73B C.J.S. Public Utilities § 65.

62-13-2.1. Refund of fees.

If the commission dismisses a complaint for lack of probable cause, the commission may refund a fee paid pursuant to Subsection B of Section 62-13-2 NMSA 1978 if the commission determines that the dismissed complaint was filed in good faith.

History: Laws 2007, ch. 223, § 1.

Effective dates. — Laws 2007, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

62-13-3. Costs.

A. Except as otherwise provided by law, in all proceedings before the commission and in the courts, each party to the controversy shall bear his own costs and no costs shall be taxed against either party.

B. In any commission rate proceeding in which the utility seeks rates to recover adjusted test-year litigation expenses there shall be no presumption that the litigation expenses are prudent. Nothing in this section shall be construed to create or imply a presumption of prudence for any utility expenditures not addressed in this section.

C. As used in this section, "litigation expenses" means all attorneys' fees, consulting fees and other costs of litigation, including in-house expenditures.

History: Laws 1941, ch. 84, § 82; 1941 Comp., § 72-1103; 1953 Comp., § 68-11-3; Laws 1983, ch. 250, § 6; 1993, ch. 265, § 1.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For definition of "commission," see 62-3-3 NMSA 1978.

For hearings before commission, see 62-10-1 to 62-10-16 NMSA 1978.

For review of commission orders, see 62-11-1 to 62-11-6 NMSA 1978.

The 1993 amendment, effective June 18, 1993, designated the existing provisions as Subsection A, and added Subsections B and C.

The 1983 amendment deleted "transfer of cause to another county" at the end of the catchline, deleted the former second sentence, relating to the transfer of a cause to another county, added "Except as otherwise provided by law" at the beginning of the section and deleted "on review" following "and in the courts."

ANNOTATIONS

Rate case expenses. — By removing the presumption of reasonableness with respect to litigation expenses, the legislature did not intend to preclude the pragmatic practice of estimating rate case expenses, but intended that utilities demonstrate the reasonableness of rate case expenses, whether estimated or actual. *In re PNM Gas Servs.*, 2000-NMSC-012, 129 N.M. 1, 1 P.3d 383.

Because the enactment of Subsection B was intended to effect a change in the policy of with respect to litigation expenses, a gas utility failed to carry its burden of proving that the amount of its requested rate case expense was reasonable and prudent by presenting only a budget-based estimate with no itemization of costs or evidence of reasonableness. *In re PNM Gas Servs.*, 2000-NMSC-012, 129 N.M. 1, 1 P.3d 383.

62-13-4. Interstate commerce not affected.

Neither this act nor any provision thereof shall apply to or be construed to apply to commerce with foreign nations or commerce among the several states of this Union, except insofar as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

History: Laws 1941, ch. 84, § 83; 1941 Comp., § 72-1104; 1953 Comp., § 68-11-4.

Compiler's notes. — For the meaning of "this act", see 62-13-1 NMSA 1978 and notes thereto.

Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003

Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82,

as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

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Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 145.

62-13-5. Mortgages and deeds of trust; execution by corporations distributing electric energy, natural gas and providing telephone and telegraph services.

The provisions of Sections 62-13-5 through 62-13-7 NMSA 1978 shall apply to mortgages, deeds of trust and other security instruments hereafter executed by, and to secure the payment of bonds, notes or other obligations of:

- A. corporations engaged in this state in the generation, manufacture, transmission, distribution and sale of electric energy and power to the public;
- B. corporations engaged in this state in the transportation, distribution and sale through local distribution system or systems of natural gas to the public for domestic, commercial, industrial or any other use;
- C. corporations owning or operating in this state any gas pipeline or lines for the transportation and sale of natural gas to other pipeline companies or to local distributing systems, or to municipalities, or to industrial consumers for their own use; and
- D. corporations engaged in this state in providing telephone or telegraph service to the public.

History: 1953 Comp., § 68-11-6, enacted by Laws 1961, ch. 76, § 1; 1973, ch. 253, § 1.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws

1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities §§ 6 to 8, 256.

29 C.J.S. Electricity § 19; 38A C.J.S. Gas § 42; 73B C.J.S. Public Utilities §§ 8, 15, 72; 86 C.J.S. Telegraphs, Telephones, Radio and Television § 17.

62-13-6. [Mortgages and deeds of trust; notice of lien; after-acquired property.]

Any mortgage, deed of trust or other security instrument hereafter executed by any corporation referred to in Section 1 [62-13-5 NMSA 1978] of this act, which by its terms subjects to the lien thereof property then owned, and any property to be acquired by the corporation subsequent to the execution by it of such mortgage, deed of trust or other security instrument, upon the deposit thereof for record, and the payment of the proper recordation and filing fees, in the proper recording office of any county in this state shall constitute notice of the lien of such mortgage as to the property situated in such county and specifically described in such mortgage, deed of trust or other security instrument and shall also constitute notice of the lien of such mortgage, deed of trust or other security instrument as to the property in such county acquired by the corporation subsequent to the execution and deposit for record as aforesaid. Every mortgage, deed of trust or other security instrument of the class to which the provisions of the act [62-13-5 to 62-13-7 NMSA 1978] are applicable shall have typed or printed on the title page, or the first page thereof, substantially the following: "This instrument contains after-acquired property provisions."

History: 1953 Comp., § 68-11-7, enacted by Laws 1961, ch. 76, § 2.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was

repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws

1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

Cross references. — For secured transactions under the Uniform Commercial Code, see 55-9-101 to 55-9-507 NMSA 1978.

62-13-7. [Prior mortgages and deeds of trust not impaired.]

The provisions of the act [62-13-5 to 62-13-7 NMSA 1978] shall be applicable only to mortgages, deeds of trust and other security instruments that are executed after the effective date of this act by a corporation of the class referred to in Section 1 [62-13-5 NMSA 1978] of this act and which comply with the provisions of this act with respect to the filing thereof for record. No mortgage, deed of trust or other security instrument executed and filed for record prior to the effective date of this act, regardless of whether the same was executed by a corporation of the class referred to in Section 1 of this act, or otherwise, shall be impaired, invalidated or otherwise affected by any of the provisions of this act. The provisions of this act are cumulative of existing statutes, including statutes enacted by this twenty-fifth legislature, and nothing herein shall be so construed as to modify or affect existing statutes relating to the execution or recording or filing of mortgages, deeds of trust or other security instruments.

History: 1953 Comp., § 68-11-8, enacted by Laws 1961, ch. 76, § 3.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8,

amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-8. Filing with the secretary of state.

Any mortgage, deed of trust, security agreement or similar security instrument, or instrument supplemental thereto, or amendatory or in satisfaction thereof, covering any real or personal property situate in more than one county in this state, which is made to secure the payment of bonds, notes or other obligations issued, or to be issued, by any public utility, rural electric cooperative, telephone company or railroads shall be executed and acknowledged in the same manner as are conveyances of real estate and shall be filed in the office of the secretary of state. The secretary of state shall endorse his certificate upon the filed instrument, specifying thereon the day and hour of the instrument's receipt, and the file number assigned to it, which shall be evidence of such facts. The secretary of state shall retain the instrument in his office, and filing the instrument in his office shall be notice to all the world of its existence and contents from the time of filing.

History: 1953 Comp., § 68-11-9, enacted by Laws 1965, ch. 112, § 1; 1973, ch. 253, § 2; 1979, ch. 78, § 1.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8,

amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-9. Refiling instruments with any county clerk.

Any mortgage, deed of trust, security agreement or similar security instrument, or instrument supplementary thereto, or amendatory or in satisfaction thereof, covering any real or personal property situate in more than one county in this state, which was heretofore made to secure the payment of bonds, notes or obligations issued, or to be issued, by any public utility, rural electric cooperative, telephone company or railroads, and which was heretofore filed or

recorded in the office of the county clerk of any county of this state, or a copy thereof was certified to by any county clerk of this state, may be refiled in the office of the secretary of state as provided in Section 62-13-8 NMSA 1978. Refiling shall thereafter, as to any real or personal property covered thereby and not previously released, be of the same effect as if the instrument had been originally filed in the office of the secretary of state in conformity with the provisions of Section 62-13-8 NMSA 1978. Nothing herein contained, however, shall require refile of any instrument.

History: 1953 Comp., § 68-11-10, enacted by Laws 1965, ch. 112, § 2; 1973, ch. 253, § 3; 1979, ch. 78, § 2.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8,

amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-10. Fees.

A uniform fee for filing, indexing and furnishing filing data for any instrument filed under the provisions of Sections 62-13-8 and 62-13-9 New Mexico Statutes Annotated, 1978 Compilation, shall be one dollar (\$1.00). Upon request of any person, the secretary of state shall furnish a copy of such instrument, and shall, upon request, certify the copy as being a true and correct copy of the instrument on file in his office. A uniform fee for each copy shall be seventy-five cents (\$.75) per page, and the uniform fee for each certification shall be fifty cents (\$.50). The secretary of state shall further certify as a true and correct copy of any instrument filed in his office pursuant to the provisions of Sections 62-13-8 and 62-13-9 New Mexico Statutes Annotated, 1978 Compilation, any typed, printed or photocopied instrument furnished to him by any person if he shall find the copy to be a true and correct copy. The uniform fee for each certification shall be fifty cents (\$.50).

History: 1953 Comp., § 68-11-11, enacted by Laws 1965, ch. 112, § 3.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v.*

N.M. Dep't of Corrs., 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Utilities § 65.

62-13-11. Recording notice in office of county clerk.

If any instrument filed with the secretary of state under the provisions of Sections 62-13-8 or 62-13-9, New Mexico Statutes Annotated, 1978 Compilation, covers any real property, a notice shall be recorded in each county where any part of such real property is situate setting forth the nature of such instrument, the date thereof, the names of the parties thereto and the date such instrument was filed with the secretary of state. The notice shall be signed and acknowledged in the same manner as other instruments relating to real estate and entitled to recording.

History: 1953 Comp., § 68-11-12, enacted by Laws 1965, ch. 112, § 4.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8,

amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. *See Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-12. Effect of filing with the secretary of state; duration of filing.

The filing of an instrument with the secretary of state under the provisions of Sections 62-13-8 and 62-13-9 NMSA 1978 together with the recording of the notice under the provisions of Section 62-13-11 NMSA 1978 in the office of the county clerk in each county where any real property is situate shall for all intents and purposes be equivalent to recording the same instrument in the office of the county clerk in each county where any part of the real or personal property is situate, as contemplated by Sections 14-9-1 through 14-9-9 NMSA 1978, and equivalent to filing the instrument as contemplated by Sections 55-9-401 through 55-9-407 NMSA 1978, which filed instrument shall remain effective until a termination statement is filed.

History: 1953 Comp., § 68-11-13, enacted by Laws 1965, ch. 112, § 5; 1979, ch. 78, § 3; 1981, ch. 301, § 1; 1982, ch. 15, § 1.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8,

amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-12.1. Effect of instruments previously filed.

All instruments on file with the secretary of state, the filing of which, pursuant to Section 62-13-12 NMSA 1978, is equivalent to filing as contemplated by Sections 55-9-401 through 55-9-407 NMSA 1978, which instruments were filed prior to, and in effect on, July 1, 1981, shall remain effective until a termination statement is filed, and the refiling thereof or the filing of a continuation statement with respect thereto shall not be required.

History: Laws 1981, ch. 301, § 2.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an

amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-13. Deposits; interest.

Interest on deposits shall be set annually at a rate equal to the federal five-year treasury note rate as reported on the first day of the calendar year by the federal reserve board of governors and shall be paid on any deposit required of a consumer by any public utility as defined in Section 62-3-3 NMSA 1978 or by any telephone company as defined in Section 63-9-2 NMSA 1978 or by any waterworks organized under Chapter 62, Article 2 NMSA 1978.

History: Laws 1979, ch. 292, § 1; 2004, ch. 100, § 1; 2005, ch. 336, § 1.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had

previously been repealed by Chapter 23, Section 1, Laws 2003.

The 2005 amendment, effective July 1, 2005, deleted the former provision that interest at a minimum rate a year equal to the federal rate shall be paid on deposits and provided that interest on deposits shall be set annually at a rate equal to the federal rate and shall be paid on deposits.

The 2004 amendment, effective May 19, 2004, deleted the minimum interest rate of 9% and inserted in its place "a year equal to the federal five-year treasury note rate as reported on the first day of the calendar year by the federal reserve board of governors".

62-13-13.1. Renewable energy distributed generation facilities; owners and operators not public utilities.

A. Notwithstanding any other provision of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] to the contrary, a person not otherwise a public utility shall not be deemed to be a public utility subject to the jurisdiction, control or regulation of the commission and the provisions of the Public Utility Act solely because the person owns or controls all or any part of any renewable energy distributed generation facility that:

- (1) is located on the host's site;
- (2) produces electric energy used at the host's site and sold to the host or the host's tenants or employees located at the host's site; and
- (3) shares a common point of connection with the electric utility serving the area and the host or the host's tenants and employees served by the renewable energy distributed generation facility.

B. Nothing contained in this section shall be interpreted to prohibit the sale of energy produced by the renewable energy distributed generation facility to the electric utility serving the area in which the renewable energy distributed generation facility is located.

C. As used in this section:

- (1) "host" means the customer of a public utility who uses the electric energy produced by a renewable energy distributed generation facility and occupies the site upon which the renewable energy distributed generation facility is located;
- (2) "renewable energy distributed generation facility" means a facility that produces electric energy by the use of renewable energy and that is sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the host at the site of the renewable energy distributed generation facility in accordance with applicable interconnection rules; and
- (3) "site" means all the contiguous property owned or leased by the host, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights of way or utility rights of way.

History: Laws 2010, ch. 102, § 1 and Laws 2010, ch. 103, § 1.

effective January 1, 2011. The section was set out as enacted by Laws 2010, ch. 103, § 1. See 12-1-8 NMSA 1978.

Compiler's notes. — Laws 2010, ch. 102, § 1 and Laws 2010, ch. 103, § 1 enacted identical new sections, both

62-13-13.2. Interconnected customers; utility cost recovery.

A. Upon request of an investor-owned utility in any general rate case, the commission shall approve interconnected customer rate riders to recover the costs of ancillary and standby services pursuant to this section only for new interconnected customers, except that a utility may seek approval of interconnected customer rate riders in the utility's renewable energy procurement plan filing before January 1, 2011, to be in effect until the conclusion of the utility's next general rate case. In establishing interconnected customer rate riders, the commission shall assure that costs to be recovered through the rate riders are not duplicative of costs to be recovered in underlying rates and shall give due consideration to the reasonably determinable embedded and incremental costs of the utility to serve new interconnected customers and the reasonably determinable benefits to the utility system provided by new interconnected customers during each three-year period after which new interconnected customer rate riders go into effect. The benefits to the utility system, as applicable, include avoided renewable energy certificate procurement costs, reduced capital investment costs resulting from the avoidance or deferral of capital expenditures, reduced energy and capacity costs and line loss reductions.

B. In a filing made pursuant to Subsection G of Section 62-8-7 NMSA 1978, a rural electric cooperative may implement rates or rate riders by customer class, giving due consideration to reasonably determinable costs and benefits of interconnected systems, that are specifically designed to recover from interconnected customers the fixed costs of providing electric services to those customers.

C. Nothing in this section shall be interpreted as preventing the utility from charging rates designed to recover all of its reasonable costs of providing service to customers.

D. As used in this section:

(1) "ancillary and standby services" means services that are essential to maintain electric system reliability and are required by or are a consequence of interconnecting distributed generation facilities to a utility's system and may include, among other services, regulation and frequency response, regulation and voltage support, spinning reserves and supplemental reserves;

(2) "interconnected customer" means a utility customer that is also interconnected to non-utility distributed generation facilities; and

(3) "new interconnected customer" means a customer that became an interconnected customer after December 31, 2010 or a customer whose renewable energy certificate purchase agreement entered into prior to January 1, 2011 is no longer in effect.

History: Laws 2010, ch. 102, § 2 and Laws 2010, ch. 103, § 2.

effective May 19, 2010. The section was set out as enacted by Laws 2010, ch. 103, § 2. See 12-1-8 NMSA 1978.

Compiler's notes. — Laws 2010, ch. 102, § 2 and Laws 2010, ch. 103, § 2 enacted identical new sections, both

62-13-13.3. Renewable energy-related services; powers and duties of commission.

A. No later than July 1, 2011, the commission shall approve any new application for creation of a holding company filed by a public utility prior to January 1, 2011, as part of that utility's plan to offer renewable energy-related services for the residents of New Mexico; provided that the creation of the holding company shall be subject to such terms and conditions as are in the public interest. The creation of a holding company under this subsection shall not result in any loss of the commission's jurisdiction over corporate allocations to the utility or over costs that are charged to ratepayers.

B. Any order of the commission entered prior to January 1, 2011 declaring the public utility status of a person who owns or controls all or any part of any distributed generation facility and sells the electricity produced by the facility to other persons shall have no force or effect on or after May 19, 2010.

C. By December 31, 2012, the commission shall submit a report to the legislature that describes the effectiveness of the state's renewable energy distributed generation program in supporting the development of new renewable energy resources and that identifies any recommended changes to improve the program's effectiveness, consistent with the public policies declared in the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978]. This report shall be no more than ten pages in length.

History: Laws 2010, ch. 102, § 3 and Laws 2010, ch. 103, § 3.

effective May 19, 2010. The section was set out as enacted by Laws 2010, ch. 103, § 3. See 12-1-8 NMSA 1978.

Compiler's notes. — Laws 2010, ch. 102, § 3 and Laws 2010, ch. 103, § 3 enacted identical new sections, both

62-13-14. Prohibition against water utilities imposing additional standby charges on owners of structures containing automatic fire protection sprinkler systems.

No water utility defined as a public utility under the provisions of Section 62-3-3 NMSA 1978 shall impose sprinkler standby charges on the owners of structures that contain automatic fire protection sprinkler systems. As used in this section, "sprinkler standby charges" means additional charges imposed by a water utility on owners of structures because the structures are equipped with automatic fire protection sprinkler systems.

History: Laws 1987, ch. 294, § 1.

Compiler's notes. — Sections 62-13-1 to 62-13-14 of the Public Utility Act are still effective as the repeal of Chapter 62, Article 13 by Laws 1998, Chapter 108, Section 82, effective July 1, 2003 Chapter 108, Section 82 was repealed prior to taking effect by Chapter 23, Section 1, Laws 2003. Although Laws 2003, Chapter 336, Section 8, amended Laws 1998, Chapter 82, as amended, an

amendment of a repealed section is ineffective. See *Quintana v. N.M. Dep't of Corrs.*, 100 N.M. 224, 668 P.2d 1101 (1983). Laws 2003, Chapter 416, Section 5 also repealed Laws 1998, Chapter 108, Section 82, as amended, a second time, however, that repeal is of no effect as the section had previously been repealed by Chapter 23, Section 1, Laws 2003.

62-13-15. Appointment of receiver.

Whenever the commission determines, after notice and hearing, that a public utility is unable or unwilling to adequately service its customers or has been actually or effectively abandoned by its owners or operator, or consistently violates the rules or orders of the commission, the commission may commence an action in the district court of the county where the utility has its principal office or place of business for the appointment of a receiver to assume possession of its property and to operate its system upon terms and conditions in accordance with the provisions of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], commission rules and orders of the court. Upon the order of the court, the receiver may issue receiver's certificates to provide funds to operate, repair, improve or enlarge the public utility. Unless otherwise provided in the court order, payment of the receiver's certificates is a first lien on the real and personal property of the public utility. The court shall prescribe the certificate's form, term and rate of interest. Receiver's certificates are exempt from the operation of any law that regulates the issuance or sale of securities of public utilities.

History: Laws 2005, ch. 339, § 1.

Effective dates. — Laws 2005, ch. 339, § 8 made Laws 2005, ch. 339, § 1 effective July 1, 2005.

62-13-16. Requiring the hiring of apprentices for the construction of facilities that generate electricity.

A. The construction of New Mexico facilities that generate electricity for New Mexico retail customers, and that are not located on the customer side of an electricity meter, shall be subject to the requirements provided in Subsection B of this section if the facilities are built as a result of competitive solicitations issued after July 1, 2020.

B. Subject to availability of qualified applicants, the construction of facilities that generate electricity for New Mexico retail customers shall employ apprentices from an apprenticeship program during the construction phase of a project at a minimum level of the following percentages of all persons employed for the project:

- (1) ten percent for projects for which on-site construction commences beginning January 1, 2020, and prior to January 1, 2024;
- (2) seventeen and one-half percent for projects for which on-site construction commences beginning January 1, 2024, and prior to January 1, 2026; and
- (3) twenty-five percent for projects for which on-site construction commences beginning January 1, 2026.

C. Apprenticeship programs used for purposes of this section shall encourage diversity among participants, participation by those underrepresented in the industry associated with that apprenticeship program and participation from disadvantaged communities, as determined by the workforce solutions department. The department shall promulgate rules to ensure compliance with this section.

D. As used in this section, "apprenticeship program" means an apprenticeship program registered pursuant to the Apprenticeship Assistance Act [Chapter 21, Article 19A NMSA 1978].

History: Laws 2019, ch. 65, § 24.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ARTICLE 14

Excavation Damage to Pipelines and Underground Utility Lines

Sec.

62-14-1. Purpose and intent.

62-14-2. Definitions.

62-14-3. Excavation.

62-14-4. Emergency excavation.

62-14-5. Marking of facilities.

62-14-5.1. Uniform color code for location of underground facilities.

62-14-6. Liability for damage to underground facilities.

Sec.

62-14-7. Liability for negligence notwithstanding information obtained.

62-14-7.1. One-call notification system.

62-14-8. Penalties.

62-14-9. Enforcement.

62-14-9.1. Alternative dispute resolution.

62-14-10. Rule-making.

62-14-1. Purpose and intent.

The purpose of Chapter 62, Article 14 NMSA 1978 is to prevent injury to persons and damage to property from accidents resulting from damage to pipelines, underground utility lines, cable television lines and related facilities by excavating and blasting.

History: 1953 Comp., § 12-32-1, enacted by Laws 1973, ch. 252, § 1; 1987, ch. 156, § 1.

The 1987 amendment, effective June 19, 1987, substituted "Chapter 62, Article 14 NMSA 1978" for "this act" and "lines, cable television lines" for "line."

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Adjoining Landowners § 44 et seq.; 61 Am. Jur. 2d Pipelines §§ 15 to 18; 64 Am. Jur. 2d Public Utilities § 16.

62-14-2. Definitions.

As used in Chapter 62, Article 14 NMSA 1978:

- A. "advance notice" means two working days;
- B. "blasting" means the use of an explosive to excavate;
- C. "cable television lines and related facilities" means the facilities of any cable television system or closed-circuit coaxial cable communications system or other similar transmission service used in connection with any cable television system or other similar closed-circuit coaxial cable communications system;
- D. "commission" means the public regulation commission;
- E. "emergency excavation" means an excavation that must be performed due to circumstances beyond the excavator's control and that affects public safety, health or welfare;
- F. "excavate" means the movement or removal of earth using mechanical excavating equipment or blasting and includes augering, backfilling, digging, ditching, drilling, grading, plowing in, pulling in, ripping, scraping, trenching, tunneling and directional boring;
- G. "excavator" means a person that excavates;
- H. "master meter system and operators" means a pipeline system that distributes natural gas or liquid propane gas within a public place, such as a mobile home park, housing project, apartment complex, school, university or hospital where the operator of the master meter system purchases gas from a distributor through a single large meter and resells the gas through a gas distribution pipeline system. The resale may occur as a payment included in a rental payment or association dues or as a separately metered system;
- I. "means of location" means a mark such as a stake, a flag, whiskers or paint that is conspicuous in nature and that is designed to last at least ten working days if not disturbed;
- J. "mechanical excavating equipment" means all equipment powered by any motor, engine or hydraulic or pneumatic device used for excavating and includes trenchers, bulldozers, backhoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows or other plowing-in or pulling-in equipment;

K. "one-call notification system" means a communication system in which an operation center provides telephone services or other reliable means of communication for the purpose of receiving excavation notice and damage reporting information and distributing that information to owners and operators of pipelines and other underground facilities;

L. "person" means the legal representative of or an individual, partnership, corporation, joint venture, state, subdivision or instrumentality of the state or an association;

M. "pipeline" means a pipeline or system of pipelines and appurtenances for the transportation or movement of any oil or gas, or oil or gas products and their byproducts subject to the jurisdiction of federal law or regulation, with the exception of master meter systems and operators;

N. "positive response" means a response, within the advance notice period, initiated by owners or operators of pipelines and underground facilities by reliable means of communication, to the one-call notification system's positive response registry system. A positive response allows the excavator to verify whether all affected pipeline and underground facility owners or operators have marked their underground facilities pursuant to Section 62-14-5 NMSA 1978 prior to commuting to the excavation site and commencing excavation;

O. "reasonable efforts" means notifying the appropriate one-call notification center or underground facility owner or operator of planned excavation;

P. "underground facility" means any tangible property described in Subsections C, M and Q of this section that is underground, but does not include residential sprinklers or low-voltage lighting; and

Q. "underground utility line" means an underground conduit or cable, including fiber optics, and related facilities for transportation and delivery of electricity, telephonic or telegraphic communications or water, sewer and fire protection lines, with the exception of master meter systems and operators.

History: 1953 Comp., § 12-32-2, enacted by Laws 1973, ch. 252, § 2; 1987, ch. 156, § 2; 1997, ch. 30, § 4; 2001, ch. 150, § 1; 2007, ch. 177, § 1; 2011, ch. 103, § 1; 2013, ch. 90, § 1.

The 2013 amendment, effective June 14, 2013, defined "positive response" to require a positive response from the owner or operators of pipelines and underground facilities; and added Subsection N.

The 2011 amendment, effective June 17, 2011, added a definition of "master meter system and operators"; expanded the purpose of one-call notification systems to include receipt of damage reports; and clarified the definitions of "pipeline" and "underground utility line" by excluding master meter systems and operators.

The 2007 amendment, effective June 15, 2007, redefined "pipeline" to include all oil and gas pipelines subject to the jurisdiction of federal law or regulation.

The 2001 amendment, effective July 1, 2001, alphabetized the defined terms; added "and directional boring" in Subsection F; added Subsection G; rewrote Subsection H; added "and other underground facilities" in Subsection I; updated subsection references in Subsection N; and made stylistic changes.

The 1997 amendment, effective October 1, 1997, made stylistic changes throughout the section; added Subsection D and redesignated the remaining subsections accordingly; substituted the language beginning "oil or gas, oil or gas products" for "gas, mixture of gases or petroleum products suitable for domestic or industrial fuel" at the end of Subsection E; added the language beginning "and does not include" in Subsection H; in Subsection I, inserted "the legal representative of or", inserted "or an", and deleted "or any legal representative thereof"; deleted "reasonable" preceding "advance notice" in Subsection K; and added Subsection L.

The 1987 amendment, effective June 19, 1987, in the opening clause substituted "Chapter 62, Article 14 NMSA 1978" for "this act"; in Subsection E, inserted "or cable, including fiber optics, and" following "and underground conduit"; inserted present Subsections F and G; redesignated former Subsection F as present Subsection H; inserted present Subsections I and J; and made minor changes in language throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Pipelines § 2.

62-14-3. Excavation.

A person who prepares engineering plans for excavation or who engages in excavation shall:

A. determine the location of any underground facility in or near the area where the excavation is to be conducted, including a request to the owner or operator of the underground facility to locate the underground facility pursuant to Section 62-14-5 NMSA 1978;

B. plan the excavation to avoid or minimize interference or damage to underground facilities in or near the excavation area;

C. provide telephonic advance notice of the commencement, extent and duration of the excavation work to the one-call notification system operating in the intended excavation area, and to the owners or operators of any existing underground facility in and near the excavation area that are not members of the local one-call notification center, in order to allow the owners to locate and mark the location of the underground facility as described in Section 62-14-5 NMSA 1978 prior to the commencement of work in the excavation area, and shall request reaffirmation of line location every ten working days after the initial request to locate;

D. prior to initial exposure of the underground facility, maintain at least an estimated clearance of eighteen inches between existing underground facilities for which the owners or operators have previously identified the location and the cutting edge or point of any mechanical excavating equipment utilized in the excavation and continue excavation in a manner necessary to prevent damage;

E. provide such support for existing underground facilities in or near the excavation area necessary to prevent damage to them;

F. backfill all excavations in a manner and with materials as may be necessary to prevent damage to and provide reliable support during and following backfilling activities for preexisting underground facilities in or near the excavation area;

G. immediately notify the one-call notification system operating in the area in the form and format required by the commission and by telephone the owner of any underground facilities that may have been damaged or dislocated during the excavation work; and

H. not move or obliterate markings made pursuant to Chapter 62, Article 14 NMSA 1978 or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978.

History: 1953 Comp., § 12-32-3, enacted by Laws 1973, ch. 252, § 3; 1987, ch. 156, § 3; 2001, ch. 150, § 2; 2011, ch. 103, § 2.

The 2011 amendment, effective June 17, 2011, required persons planning or engaging in an excavation to report damages to or the relocation of underground facilities to the one-call notification system operating in the area of the excavation.

The 2001 amendment, effective July 1, 2001, substituted "determine" for "make reasonable efforts to inform himself of" in Subsection A; in Subsection C, substituted "telephonic advance notice" for "reasonable advance notice", inserted "the one-call notification system operating in the intended excavation area, and", "or operators" following "owners", "that are not members of the local one-call notification center", and "and shall request reaffirmation of line location every ten working days after the initial locate request"; in Subsection D, inserted "and continue excavation in a manner necessary to prevent damage"; substituted "immediately notify by telephone" for "notify as promptly as possible" in Subsection G; and added Subsection H; and made stylistic changes.

The 1987 amendment, effective June 19, 1987, in the opening clause substituted "prepares engineering plans for excavation or who engages" for "shall engage"; substituted "underground facility" for "pipeline or underground utility line" in Subsections A, B and E through G; in Subsection A inserted "including a request to the owner or operator of the underground facility to locate the underground facility pursuant to Section 62-14-5 NMSA 1978" at the end; in Subsection C substituted "any existing underground facility" for "pipelines or underground utility lines" near the middle and "location of the underground facility as described in Section 62-14-5 NMSA 1978 prior to the commencement of work" for "location of pipelines and underground utility lines" near the end; in Subsection D inserted at the beginning "prior to initial exposure of the underground facility" and substituted "existing underground facility for which the owners or operators have previously identified the location" for "any nonexposed pipeline or underground utility line"; and made minor changes in language and punctuation throughout the section.

62-14-4. Emergency excavation.

Every person who engages in emergency excavation shall take all necessary and reasonable precaution to avoid or minimize interference with or damage to existing underground facilities in and near the excavation area and shall notify as promptly as possible the owners of underground facilities located in and near the emergency excavation area and the one-call notification system operating in the area in the form and format required by the commission. In the event of any damage to or dislocation of any underground facility caused by the emergency excavation work, the person responsible for the excavation shall immediately notify the owner of the underground facility and the one-call notification system operating in the area in the form and format required by the commission.

History: 1953 Comp., § 12-32-4, enacted by Laws 1973, ch. 252, § 4; 1987, ch. 156, § 4; 2011, ch. 103, § 3.

The 2011 amendment, effective June 17, 2011, required persons engaged in an emergency excavation to notify the one-call notification system operating in the area

of the excavation that the excavation will occur and any damages to or the relocation of underground facilities.

The 1987 amendment, effective June 19, 1987, substituted "underground facility" for "pipelines and underground utility lines" the three places that phrase appears and made minor changes in language throughout the section.

62-14-5. Marking of facilities.

A. A person owning or operating an underground facility shall, upon the request of a person intending to commence an excavation and upon advance notice, locate and mark on the surface the actual horizontal location, within eighteen inches by some means of location, of the underground facilities in or near the area of the excavation so as to enable the person engaged in excavation work to locate the facilities in advance of and during the excavation work.

B. If the owner or operator of the underground facility finds that the owner or operator has no underground facilities in the proposed area of excavation, the owner or operator shall provide a positive response and, at the option of the owner or operator of the underground facility mark the area as "Clear" or "No Underground Facilities" in the appropriate color code as specified in Section 62-14-5.1 NMSA 1978.

C. If the owner or operator fails to correctly mark the underground facility after being given advance notice and such failure to correctly mark the facility results in additional costs to the person doing the excavating, then the owner or operator shall reimburse the person engaging in the excavation for the reasonable costs incurred.

D. An owner of an underground facility shall not move or obliterate markings made pursuant to Chapter 62, Article 14 NMSA 1978 or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978.

History: 1953 Comp., § 12-32-5, enacted by Laws 1973, ch. 252, § 5; 1987, ch. 156, § 5; 2001, ch. 150, § 3; 2011, ch. 103, § 4; 2013, ch. 90, § 2.

The 2013 amendment, effective June 14, 2013, required owners or operators to provide a positive response if they have no underground facilities in the area of excavation; and in Subsection B, after "the owner or operator shall", deleted "contact the appropriate one-call notification center or mark" and added "provide a positive response and, at the option of the owner of the underground facility, mark the area as 'Clear' or 'No Underground Facilities'", and after "NMSA 1978", deleted "marking the area as 'Clear' or 'No Underground Facilities'". If the area is not marked 'Clear' or 'No Underground Facilities', the excavator shall contact the one-call notification system operating in the region in order to verify the area as 'Clear' or 'No Underground Facilities'.

The 2011 amendment, effective June 17, 2011, required excavators to contact the regional one-call notification

system if an area is not marked as "Clear" or "No Underground Facilities" to verify the status of the area.

The 2001 amendment, effective July 1, 2001, inserted Subsections B and D, redesignating former Subsection B as present Subsection C and deleted "reasonable" preceding "advance notice" in Subsections A and C.

The 1987 amendment, effective June 19, 1987, designated the former provisions as set out in the main pamphlet as Subsection A; in Subsection A, substituted "an underground facility" for "pipeline or underground utility line" both places it appears and "locate and mark on the surface the actual horizontal location within twelve inches by some" for "mark by some reasonable and customary" near the middle; added Subsection B; and made minor changes in language throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Pipelines § 49.

62-14-5.1. Uniform color code for location of underground facilities.

In marking an excavation site and the location of underground facilities, both the excavator and the owner or operator shall use the following uniform color code:

- A. blue for water;
- B. green for sewer;
- C. orange for communications or coaxial cable;
- D. pink for survey;
- E. purple for reclaimed water;
- F. red for electric;
- G. white for proposed excavation area; and
- H. yellow for gas.

History: Laws 2001, ch. 150, § 4; 2011, ch. 103, § 5.

The 2011 amendment, effective June 17, 2011, included excavation sites and excavators within the scope of this section.

62-14-6. Liability for damage to underground facilities.

A. If any underground facility is damaged by any person who failed to make reasonable efforts to determine its location as provided in Chapter 62, Article 14 NMSA 1978, that person shall reimburse the owner of the underground facility for the actual cost of the damage to the underground facility, including the cost of restoration of services. The person engaging in the excavation may also be liable to the owner or operator of the underground facility for the comparative negligence of the person engaging in the excavation which results in damage to the facility for an additional amount not to exceed three hundred thousand dollars (\$300,000) for each occurrence.

B. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and the damaged underground facility was correctly located by the owner or operator of the underground facility as provided in Section 62-14-5 NMSA 1978, then that person causing the damage shall be liable to the owner or operator of the underground facility for only the actual cost of damage to the underground facility, including the cost of restoration of service.

C. If any underground facility is damaged by any person who has made reasonable efforts to determine its location and damage to the underground facility is caused by the failure of the owner or operator to correctly locate that underground facility as provided in Section 62-14-5 NMSA 1978, then the person engaging in the excavation shall have no liability for the damage to that facility.

D. It is not the intent of Chapter 62, Article 14 NMSA 1978 to impose civil liability to any person beyond that provided in this section.

History: 1953 Comp., § 12-32-6, enacted by Laws 1973, ch. 252, § 6; 1987, ch. 156, § 6; 2001, ch. 150, § 5.

The 2001 amendment, effective July 1, 2001, substituted "to determine its location" for "to inform himself as to its location" in Subsections A, B and C; and inserted "NMSA 1978" in Subsection D.

The 1987 amendment, effective June 19, 1987, designated the former first sentence as set out in the main pamphlet as Subsection A; in Subsection A, in the first sentence substituted "Chapter 62, Article 14 NMSA 1978, that" for "this act, then such" and "actual cost of the damage to the underground facility, including the cost of restoration of services" for "entire cost of the repair of such facility," added the second sentence and made minor changes in language throughout the subsection; added Subsections B and C; designated the former last sentence

of the section as Subsection D and, in that subsection, substituted "Chapter 62, Article 14" for "this act."

ANNOTATIONS

Law reviews. — For article, "Bartlett Revisited: New Mexico Tort Law Twenty Years After the Abolition of Joint and Several Liability – Part One," see 33 N.M.L. Rev. 1 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Pipelines §§ 35, 36.

Excavator's liability for injury or damage resulting from explosion or fire caused by damaging of gas mains and pipes, 53 A.L.R.2d 1083.

Liability of one excavating on private property for injury to public utility cables, conduits or the like, 28 A.L.R.5th 603.

62-14-7. Liability for negligence notwithstanding information obtained.

The act of obtaining or making reasonable efforts to obtain information as required by Chapter 62, Article 14 NMSA 1978 shall not excuse any person making any excavation from doing so in a careful and prudent manner, nor shall it excuse such person from liability for any damage or injury resulting from his negligence as limited in Section 62-14-6 NMSA 1978.

History: 1953 Comp., § 12-32-7, enacted by Laws 1973, ch. 252, § 7; 1987, ch. 156, § 7.

Cross references. — For negligent use of explosives being petty misdemeanor, see 30-7-6 NMSA 1978.

The 1987 amendment, effective June 19, 1987, substituted "Chapter 62, Article 14 NMSA 1978" for "this act"

near the middle and added "as limited in Section 62-14-6 NMSA 1978" at the end.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 C.J.S. Explosives § 11; 65A C.J.S. Negligence §§ 243, 273.

62-14-7.1. One-call notification system.

A. An owner or operator of an underground facility subject to Chapter 62, Article 14 NMSA 1978 shall be a member of a one-call notification system operating in the region with the exception of private underground facilities owned by a homeowner and operated and located on residential property. A one-call notification system may be for a region of the state or statewide in scope, unless federal law provides otherwise.

B. Each one-call notification system shall be operated by:

- (1) an owner or operator of pipeline facilities;
- (2) a private contractor;
- (3) a state or local government agency; or
- (4) a person who is otherwise eligible under state law to operate a one-call notification

system.

C. If the one-call notification system is operated by owners or operators of pipeline facilities, it shall be established as a nonprofit entity governed by a board of directors that shall establish the operating processes, procedures and technology needed for a one-call notification system. The board shall further establish a procedure or formula to determine the equitable share of each member for the costs of the one-call notification system. The board may include representatives of excavators or other persons deemed eligible to participate in the system who are not owners or operators.

D. Excavators shall give advance notice to the one-call notification system operating in the intended excavation area and provide information established by rule of the commission, except when excavations are by or for a person that:

- (1) owns or leases or owns a mineral leasehold interest in the real property on which the excavation occurs; and
- (2) operates all underground facilities located in the intended excavation area.

E. The one-call notification system shall promptly transmit excavation notice information to owners or operators of pipeline facilities and other underground facilities in the intended excavation area.

F. After receiving advance notice, owners and operators of pipeline facilities and other underground facilities shall locate and mark their facilities in the intended excavation area and shall provide a positive response. The one-call notification center shall make available to the commission appropriate positive response records for investigations of alleged violations of Chapter 62, Article 14 NMSA 1978.

G. The one-call notification system shall provide a toll-free telephone number or another comparable and reliable means of communication to receive advance notice of excavation. Means of communication to distribute excavation notice to owners or operators of pipeline facilities and other underground facilities shall be reliable and capable of coordination with one-call notification systems operating in other regions of the state.

H. Operators of one-call notification systems shall notify the commission of its members and the name and telephone number of the contact person for each member and make available to the commission appropriate records in investigations of alleged violations of Chapter 62, Article 14 NMSA 1978.

I. One-call notification systems and owners and operators of pipeline facilities shall promote public awareness of the availability and operation of one-call notification systems and work with state and local governmental agencies charged with issuing excavation permits to provide information concerning and promoting awareness by excavators of one-call notification systems.

J. The commission may prescribe reasonable maximum rates for the provision of one-call services in New Mexico, provided that if the reasonableness of such rates is contested in the manner provided by commission rule, the burden of proof to show the unreasonableness of such rates shall be upon the person contesting their reasonableness.

History: Laws 1997, ch. 30, § 1; 2001, ch. 150, § 6; 2007, ch. 177, § 2; 2011, ch. 103, § 6; 2013, ch. 90, § 3.

The 2013 amendment, effective June 14, 2013, required owners and operators to provide a positive

response; required the one-call center to provide positive response records to the commission; and in Subsection F, in the first sentence, after "excavation area", added "and shall provide a positive response" and added the second sentence.

The 2011 amendment, effective June 17, 2011, exempted private underground facilities owned by homeowners and operated and located on residential property from the requirement that the owners and operators of underground facilities be a member of the regional one-call notification system.

The 2007 amendment, effective June 15, 2007, required an owner or operator of an underground facility in a region in which a one-call system is operating to be a member of the one-call system by April 15, 2008 unless earlier membership is required by federal law; and added Subsection J.

The 2001 amendment, effective July 1, 2001, deleted "and regulation" following "rule" in Subsection D; inserted "and make available to the commission appropriate records in investigations of alleged violations of Chapter 62, Article 14 NMSA 1978" at the end of Subsection H; and substituted "promoting" for "promote" in Subsection I.

62-14-8. Penalties.

In addition to any other liability imposed by law, an excavator, after a formal hearing and upon a finding, who has failed to comply with Subsection C of Section 62-14-3 NMSA 1978 is subject to an administrative penalty of up to five thousand dollars (\$5,000) for a first offense as assessed by the commission. Thereafter, the commission may assess an administrative penalty of up to a maximum of twenty-five thousand dollars (\$25,000) for subsequent violations of Subsection C of Section 62-14-3 NMSA 1978. In addition to any other penalty imposed by law, an operator of underground pipeline facilities or underground utilities, excavator or operator of a one-call notification system, after formal hearing and upon a finding, who has willfully failed to comply with Chapter 62, Article 14 NMSA 1978 shall be subject to an administrative penalty of up to five thousand dollars (\$5,000) for a first offense as assessed by the commission. Thereafter, upon finding that a violation of Chapter 62, Article 14 NMSA 1978 has occurred, the commission may, upon consideration of the nature, circumstances, gravity of the violation, history of prior violations, effect on public health, safety or welfare and good faith on the part of the person in attempting to remedy the cause of the violation, assess an administrative penalty up to a maximum of twenty-five thousand dollars (\$25,000) per violation consistent with federal law. No offense occurring more than five years prior to the current offense charged shall be considered for any purpose. All actions to recover the penalties provided for in this section shall be brought by the commission. All penalties recovered in any such action shall be paid into the state general fund.

History: 1953 Comp., § 12-32-8, enacted by Laws 1973, ch. 252, § 8; 1993, ch. 282, § 41; 1997, ch. 30, § 5; 2001, ch. 150, § 7; 2011, ch. 103, § 7.

The 2011 amendment, effective June 17, 2011, authorized the imposition of an administrative penalty even if an operator's failure to comply with the law did not contribute to the damage of an underground facility.

The 2001 amendment, effective July 1, 2001, rewrote the section, which formerly provided for a civil penalty of up to \$500 for those who willfully failed to comply with

Chapter 62, Article 14 NMSA 1978, and stated who is responsible for prosecuting the case and the proper venue.

The 1997 amendment, effective October 1, 1997, made stylistic changes in the second and third sentences.

The 1993 amendment, effective June 18, 1993, made stylistic changes in the first sentence; in the second sentence, substituted "New Mexico public utility commission" for "public service commission" and "division of the regulation and licensing department" for "commission"; and substituted "their" for "its" in the next-to-last sentence.

62-14-9. Enforcement.

If any person excavates or intends to excavate in violation of Chapter 62, Article 14 NMSA 1978, the commission or any interested or affected owner or operator of an underground facility may file, in the district court of the county in which the excavation is occurring or intended, an action seeking to enjoin the excavation.

History: Laws 1997, ch. 30, § 2.

62-14-9.1. Alternative dispute resolution.

The commission shall promulgate rules for voluntary alternative dispute resolution procedures available to owners or operators, excavators and other interested parties regarding disputes that cannot be resolved through consultation and negotiation arising from damage to underground

facilities, including any cost or damage incurred by the owner or operator or the excavator as a result of any delay in an excavation project while an underground facility is restored, repaired or replaced. The alternative dispute resolution procedure shall not affect civil penalties levied pursuant to Section 62-14-8 NMSA 1978 or change the basis for civil liability for damages.

History: Laws 2001, ch. 150, § 8.

Effective dates. — Laws 2001, ch. 150, § 9 made Laws 2001, ch. 150, § 8 effective July 1, 2001.

62-14-10. Rule-making.

The commission shall promulgate rules and regulations to implement the provisions of Chapter 62, Article 14 NMSA 1978.

History: Laws 1997, ch. 30, § 3.

ARTICLE 15

Rural Electric Cooperatives

Sec.

- 62-15-1. Short title.
- 62-15-2. Purpose; definition.
- 62-15-3. Powers.
- 62-15-3.1. Subsidiary business activities.
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- 62-15-5. Incorporators.
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- 62-15-8. Members.
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- 62-15-9.2. Limitation on liability and indemnification of officers and trustees.
- 62-15-10. Voting districts.
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- 62-15-15. Effect of consolidation or merger.
- 62-15-16. Conversion of existing corporations.
- 62-15-17. Initiative by members.
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Sec.

- 62-15-21. Disposition of property.
- 62-15-22. Nonliability of members for debts of cooperative.
- 62-15-23. Recordation of mortgages.
- 62-15-24. Waiver of notice.
- 62-15-25. Trustees, officers or members; notaries.
- 62-15-26. Foreign corporations.
- 62-15-26.1. Distribution cooperative utilities organized in other states; application.
- 62-15-27. Fees.
- 62-15-28. Taxation.
- 62-15-29. Repealed.
- 62-15-30. Securities Act exemption.
- 62-15-31. "Rural area," "person" and "member" defined.
- 62-15-32. Construction of act; inconsistency.
- 62-15-33. Conversion of corporations organized under Laws 1937, Chapter 100, into cooperatives under the Rural Electric Cooperative Act, as amended.
- 62-15-34. Renewable portfolio standard.
- 62-15-35. Renewable energy certificates; commission duties.
- 62-15-36. Renewable energy and conservation fee.
- 62-15-37. Definitions; energy efficiency; renewable energy.

62-15-1. Short title.

Chapter 62, Article 15 NMSA 1978 may be cited as the "Rural Electric Cooperative Act".

History: Laws 1939, ch. 47, § 1; 1941 Comp., § 48-401; 1953 Comp., § 45-4-1; Laws 1998, ch. 108, § 49.

Cross references. — For jurisdiction of over rural electric cooperatives, see 62-3-2, 62-3-3 and 62-15-32 NMSA 1978 and notes thereto.

The 1998 amendment, effective January 1, 1999, substituted "Chapter 62, Article 15 NMSA 1978" for "This Act" near the beginning of the section.

ANNOTATIONS

Public service commission (now public regulation commission) was not required to delineate an electric cooperative's service area where part of its system was in an area previously certificated to another utility. *Lea Cnty. Elec. Coop. v. N.M. Pub. Serv. Comm'n*,

1965-NMSC-057, 75 N.M. 191, 402 P.2d 377, cert. denied, 385 U.S. 969, 87 S. Ct. 506, 17 L. Ed. 2d 433 (1966).

Premature action. — Action by cooperative seeking to enjoin municipality from acquiring electric distribution and transmission lines outside of corporate limits where the cooperative held a prior franchise was brought prematurely since it did not yet own plant or transmission lines and could not show basis for relief in equity. *Sierra Elec. Coop. v. Town of Hot Springs*, 1947-NMSC-022, 51 N.M. 150, 180 P.2d 244.

Cooperatives are subject to highway and street regulations. — Rural electrification cooperatives are subject to the same regulations by the highway commission and the county or municipality for the use of rights-of-way as any other public utility, and would be subject

to the penal features of 67-8-13 and 67-8-14 NMSA 1978. 1951-52 Op. Att'y Gen. No. 52-5624.

Law reviews. — For note, "Corporate Law - Formulating and Applying a 'Proper Purpose' Analysis to a Books and Records Inspection Request - *Schein v. Northern Rio Arriba Electric Cooperative, Inc.*," see 28 N.M.L. Rev. 133 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 1, 4 to 9, 11 to 13, 49.

Duty of mutual association, nonprofit organization or cooperative to furnish utility services, 56 A.L.R.2d 413.

Validity and enforceability of bylaw amendment reducing benefits available to members, 61 A.L.R.3d 976.

Competency of juror as affected by his membership in cooperative association interested in the case, 69 A.L.R.3d 1296.

Liability of electric utility to nonpatron for interruption or failure of power, 54 A.L.R.4th 667.

3 C.J.S. Agriculture §§ 138 to 158; 43 C.J.S. Industrial Cooperative Societies §§ 1, 3.

62-15-2. Purpose; definition.

Cooperative nonprofit membership corporations may be organized under the Rural Electric Cooperative Act for the primary purpose of supplying electric power and energy and promoting and extending the use of electricity in rural areas. Corporations organized under that act and corporations which become subject to that act in the manner provided in that act and for the purposes of Sections 62-15-13, 62-15-14, 62-15-15 and 62-15-19 NMSA 1978, corporations organized on a nonprofit or cooperative basis under the laws of another state for the primary purpose of supplying electric power or energy are referred to in the Rural Electric Cooperative Act as "cooperatives".

History: Laws 1939, ch. 47, § 2; 1941 Comp., § 48-402; 1953 Comp., § 45-4-2; Laws 1987, ch. 36, § 1; 1998, ch. 46, § 1.

The 1998 amendment, effective March 6, 1998, inserted "and for the purposes of Sections 62-15-13, 62-15-14, 62-15-15 and 62-15-19 NMSA 1978, corporations organized on a nonprofit or cooperative basis under the laws of another state for the primary purpose of supplying electric power or energy" in the second sentence.

The 1987 amendment, effective June 19, 1987, in the first sentence substituted "primary purpose of supplying electric power and energy" for "purpose of supplying electric energy," and made minor changes in language and punctuation throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations § 4.

62-15-3. Powers.

A cooperative shall have power to:

- A. sue and be sued, complain and defend, in its corporate name;
- B. have perpetual existence by its corporate name;
- C. adopt a corporate seal and alter the same at pleasure, and to use the seal by causing it or a facsimile of it to be impressed or affixed or in any other manner reproduced; but failure to have or to affix a corporate seal does not affect the validity of any instrument or any action taken in pursuance of or in reliance on any instrument;
- D. own, operate, lease or control plant, property and facilities for the generation, transmission or distribution, sale or furnishing of electricity for light, heat or power or other uses; and to generate, manufacture, purchase, acquire, accumulate and transmit electric energy; and to distribute, sell, supply and dispose of electric energy in rural areas to or for its members, governmental agencies and political subdivisions and the general public;
- E. make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing electric and plumbing fixtures, appliances, apparatus and equipment of any kind and character; and in connection therewith to purchase, acquire, lease, sell, distribute, install and repair such electric and plumbing fixtures, appliances, apparatus and equipment; and to accept or otherwise acquire and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any type of security therefor; and to lend money for its corporate purposes, invest and reinvest its funds; and to take and hold real and personal property as security for the payment of funds so loaned or invested;
- F. make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants;

G. purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, exercise rights arising out of the ownership or possession thereof, use, employ, sell, assign, transfer, convey, mortgage, lend, pledge, hypothecate or otherwise dispose of and otherwise use and deal in and with shares, rights, memberships or other interests in, or notes, bonds, debentures, mortgages, pass-books, certificates of deposit or other obligations of, other domestic or foreign corporations, associations, partnerships, limited partnerships or individuals, or direct or indirect obligations or securities of individuals, associations, cooperatives, partnerships, corporations or of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

H. construct, purchase, take, receive, lease as lessee or otherwise acquire, and to own, hold, improve, use, equip, maintain and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, property, buildings, structures, dams, plants and equipment and any kind and class of real or personal property which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

I. purchase or otherwise acquire, and to own, hold, use and exercise, and to sell, assign, transfer, convey, mortgage, pledge, hypothecate or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way and easements;

J. make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the board of trustees shall determine and otherwise contract indebtedness, and to issue its notes, bonds and other evidences of indebtedness therefor, and to secure the payment of any thereof by mortgage, pledge, deed of trust, assignment, security agreement or any other hypothecation or encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, franchises, revenues or income;

K. construct, maintain and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation all roads, highways, streets, alleys and bridges, and upon, under and across all publicly owned property;

L. exercise the power of eminent domain in the manner provided by the Eminent Domain Code [42A-1-1 NMSA 1978] for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems;

M. conduct its business, carry on its operations, have offices and exercise the powers granted by the Rural Electric Cooperative Act in any state, territory, district or possession of the United States or in any foreign country;

N. adopt, amend and repeal bylaws consistent with the Rural Electric Cooperative Act and the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978];

O. make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war to make donations in aid of war activities;

P. transact any lawful business in aid of governmental policy;

Q. subject to any limitations set forth in the articles of incorporation or bylaws, do such other and further acts and undertake such other and further activities and transactions for the mutual benefit of its members and patrons as may be done and undertaken by a corporation organized under the Business Corporation Act [Chapter 53, Articles 11 through 18 NMSA 1978] for the same or any additional lawful purpose, including the indemnification of and the procurement of insurance for present and former trustees, officers, employees and agents of the cooperative as if trustees and members were directors and shareholders respectively;

R. pay pensions and establish pension plans, pension trusts, bonus plans, health insurance plans, savings plans and any other incentive plans or employee relation plans customarily used by broadly held corporations for its trustees, officers and employees, or for its employees alone;

S. cease its corporate activities and surrender its corporate franchise; and

T. do and perform all other acts and things and have and exercise all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized, to effectuate the powers set forth in this section and to accept all the burdens and exercise all the benefits which apply to public utilities under the laws of New Mexico.

History: Laws 1939, ch. 47, § 3; 1941 Comp., § 48-403; 1953 Comp., § 45-4-3; Laws 1967, ch. 102, § 2; 1971, ch. 8, § 1; 1981, ch. 125, § 51; 1987, ch. 36, § 2.

Cross references. — For excavation damage to pipelines and underground utility lines, see 62-14-1 to 62-14-8 NMSA 1978.

The 1987 amendment, effective June 19, 1987, in Subsection P, substituted the present provisions for "in time of war transact any lawful business in aid of the United States in the prosecution of the war"; substituted the present provisions of Subsection Q for the provisions set out in the 1984 Replacement Pamphlet; and made minor changes in language and punctuation throughout the section.

ANNOTATIONS

Scope of service. — Prior to the 1967 amendment to Subsection D, a rural electric cooperative could only supply electric energy to its members, to governmental agencies and political subdivisions and to other persons not in excess of 10% of the number of its members. *Socorro Elec. Coop. v. Pub. Serv. Co.*, 1959-NMSC-105, 66 N.M. 343, 348 P.2d 88.

Power of eminent domain. — A corporation organized for the primary purpose of supplying electric power or energy to rural areas on a cooperative basis, although organized under the laws of another state and resulting from an interstate merger, is a rural electric cooperative under the Rural Electric Cooperative Act, and thus has the power of eminent domain under 62-15-14 NMSA 1978. *Tri-State Generation & Transmission Ass'n v. King*, 2003-NMSC-029, 134 N.M. 467, 78 P.3d 1226.

Premature action. — Action by cooperative seeking to enjoin municipality from acquiring electric distribution and transmission lines outside of corporate limits where cooperative held prior franchise was brought prematurely since it did not yet own plant or transmission lines and could not show basis for equitable relief. *Sierra Elec. Coop., Inc. v. Town of Hot Springs*, 1947-NMSC-022, 51 N.M. 150, 180 P.2d 244.

Powers of county commissioners over use of roads by utilities. 1973 Op. Atty Gen. No. 73-26.

Law reviews. — For article, "Statutory Adoption of Several Liability in New Mexico: A Commentary and Quasi-Legislative History," see 18 N.M.L. Rev. 483 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 30 to 32.

43 C.J.S. Industrial Cooperative Societies §§ 5, 6.

62-15-3.1. Subsidiary business activities.

A. Cooperatives may form, organize, acquire, hold, dispose of and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products and telecommunications and communications services and products, including cable and satellite television and water and wastewater collection and treatment, without prior approval from the public regulation commission so long as those other business entities meet all of the following conditions:

(1) the subsidiary is not financed with loans from the federal rural utilities service of the United States department of agriculture or the United States department of agriculture or with similar financing from any successor agency. This limitation shall not apply to rural utilities service loans or United States department of agriculture loans, or loans from successor agencies, to the extent the loan is to be used for a purpose authorized by the lending agency;

(2) the subsidiary fully compensates the cooperative for the use of personnel, services, equipment, tangible property and the cooperative's fully distributed costs, including all direct and indirect costs and the cost of capital incurred in providing the personnel, services, equipment or tangible property in question;

(3) the total investments, loans, guarantees and pledges of assets of a cooperative in all of its subsidiaries shall not exceed twenty percent of the cooperative's assets; and

(4) the subsidiary agrees to not offer any service or product to the public until it has obtained federal and state regulatory approvals, if any, required to provide the service or product to the public.

B. A director, or spouse of a director, of a cooperative may not be employed or have any financial interest in a separate business entity formed, organized, acquired, held or operated by that cooperative pursuant to the provisions of this section.

C. Should the public regulation commission, upon complaint showing reasonable grounds for investigation, find after investigation and public hearing that the charges for the transactions between the cooperative and other business entity do not conform with the provisions of this section, the public regulation commission is authorized to direct the cooperative to adjust those charges to comply with the provisions of this section. If the cooperative does not comply with the public regulation commission's directive, the public regulation commission is authorized to direct the cooperative to divest its interest in the other business entity. For purposes of enforcing this section, members of the public regulation commission, and the public regulation commission staff, are authorized to inspect the books and records of such other business entities and the cooperatives,

provided that proprietary or confidential data or information of the separate business entities shall not be disclosed to a third party. The public regulation commission shall adopt rules and reporting requirements to enforce the provisions of this section.

D. Nothing in this section grants the public regulation commission the power to regulate a generation and transmission cooperative referred to in Section 62-6-4 NMSA 1978.

History: Laws 2003, ch. 416, § 1.

Effective dates. — Laws 2003, ch. 416, § 6 makes the act effective on July 1, 2003.

62-15-4. Name.

The name of each cooperative shall include the words "electric" and "cooperative" and the abbreviation "inc."; provided that limitation shall not apply if, in an affidavit made by the president or vice president of a cooperative and filed with the secretary of state, it appears that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of, or authorized to transact business in, this state. The words "electric" and "cooperative" shall not both be used in the name of any corporation organized under the laws of, or authorized to transact business in, this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of the Rural Electric Cooperative Act.

History: Laws 1939, ch. 47, § 4; 1941 Comp., § 48-404; 1953 Comp., § 45-4-4; 2013, ch. 75, § 25.

The 2013 amendment, effective July 1, 2013, required that cooperatives file an affidavit with the secretary of state that the cooperative is precluded from doing business in another state because its name includes the required words; and in the first sentence, after "filed with

the", deleted "state corporation commission" and added "secretary of state".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 5 to 9.
43 C.J.S. Industrial Cooperative Societies § 4.

62-15-5. Incorporators.

Five or more natural persons, or two or more cooperatives, may organize a cooperative in the manner hereinafter provided.

History: Laws 1939, ch. 47, § 5; 1941 Comp., § 48-405; 1953 Comp., § 45-4-5.

62-15-6. Articles of incorporation.

A. The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act, shall be signed and acknowledged by each of the incorporators and shall state:

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) the names and addresses of the incorporators;
- (4) the names and addresses of the persons who constitute its first board of trustees; and
- (5) any provisions not inconsistent with the Rural Electric Cooperative Act deemed necessary or advisable for the conduct of its business and affairs.

B. The articles of incorporation shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act.

C. It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under the Rural Electric Cooperative Act.

History: Laws 1939, ch. 47, § 6; 1941 Comp., § 48-406; 1953 Comp., § 45-4-6; 2013, ch. 75, § 26.

The 2013 amendment, effective July 1, 2013, required that articles of incorporation of cooperatives be filed with

the secretary of state; and in Subsection B, after "submitted to the", deleted "state corporation commission" and added "secretary of state".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations § 1.
43 C.J.S. Industrial Cooperative Societies § 3.

62-15-7. Bylaws.

The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter bylaws shall be adopted, amended or repealed by the majority of the members present at any regular annual meeting or special meeting called for that purpose, a quorum being present. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this act [62-15-1 to 62-15-32 NMSA 1978] or with its articles of incorporations [incorporation].

History: Laws 1939, ch. 47, § 7; 1941 Comp., § 48-407; 1953 Comp., § 45-4-7; Laws 1957, ch. 97, § 1.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

ANNOTATIONS

Bylaws may be amended by vote at district meetings. — A rural electric cooperative may provide for the amendment of its bylaws by a vote taken at a series of meetings of voting districts rather than at a general meeting of all the members, but, in so doing, it cannot take away the power of the majority of members to adopt, amend or repeal the bylaws. 1961-62 Op. Att'y Gen. No. 61-62.

It is legal to provide for the amendment of bylaws by a majority vote of the members voting by districts, rather than at a general meeting of all the members. This interpretation does no violence to this section, since it mentions "regular annual meeting," and does not exclude a regular annual meeting or special meeting of a voting district. The interpretation is supported by the liberal construction required to be given these statutes under Section 62-15-32 NMSA 1978. 1961-62 Op. Att'y Gen. No. 61-62.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 13 to 15, 21.
43 C.J.S. Industrial Cooperative Societies §§ 3 to 5, 7 to 11.

62-15-8. Members.

A. No person who is not an incorporator shall become a member of a cooperative unless the person agrees to use electric energy furnished by the cooperative when electric energy is available through its facilities. The bylaws of a cooperative may provide that any person, including an incorporator, shall cease to be a member of a cooperative if the person fails or refuses to use electric energy made available by the cooperative or if the electric energy is not made available to that person by the cooperative within a specified time after the person becomes a member of the cooperative. Membership in the cooperative shall not be transferable except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect of membership.

B. An annual meeting of the members shall be held at such time as shall be provided in the bylaws or, if not contrary to the bylaws, by the board of trustees.

C. Special meetings of the members may be called by the board of trustees, by any three trustees, by petition signed by not less than ten percent of the members or by the president.

D. Annual and special meetings of members, whether general or by voting districts established pursuant to the Rural Electric Cooperative Act, shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all general meetings shall be held in the city or town in which the principal office of the cooperative is located, and all meetings by voting districts shall be held at a location set by the board of trustees within the boundaries of each district.

E. Except as otherwise provided in the Rural Electric Cooperative Act, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose for which the meeting is called, shall be given to each member by the board of trustees or the secretary, or their legal representatives, either personally or by mail not less than ten or more than twenty-five days before the date of the meeting. Failure to receive notice deposited in the mail addressed to a member at the member's address shown on the cooperative's books and records shall not affect the validity of any business conducted at a meeting.

F. Five percent of all members present in person constitutes a quorum for the transaction of business at all meetings of the members, unless the bylaws prescribe a different number of members for determining a quorum. The bylaws may allow for ballots submitted by mail to be considered in

establishing a quorum for the sole purpose of voting on an issue or question, the language of which is stated exactly in the notices and on the ballots provided to all members. If less than a quorum is present at any meeting, the majority of those present in person may adjourn the meeting from time to time without further notice. The failure to hold a meeting of members due to the absence of a quorum shall not affect the validity of any business conducted by the board of trustees.

G. Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person; provided that if the bylaws provide for voting by proxy or by mail, the bylaws shall prescribe the conditions under which proxy or mail voting shall be exercised. No person shall vote as proxy for more than three members at any meeting of the members.

H. All actions required by the Rural Electric Cooperative Act to be adopted or approved by a simple majority or greater number of members voting on the action at an annual or special meeting may be acted upon by voting at a general meeting or, to the extent and in the manner that the board of trustees may authorize, by voting by the voting districts established pursuant to that act, so long as the requisite majority of members voting on the action is obtained regardless of whether such a majority is obtained in any particular voting district. Action by voting by the voting districts shall be valid if a quorum exists as a result of a series of voting district meetings regardless of whether a quorum is present in any particular voting district.

History: Laws 1939, ch. 47, § 8; 1941 Comp., § 48-408; 1953 Comp., § 45-4-8; Laws 1961, ch. 210, § 1; 1983, ch. 273, § 1; 2019, ch. 131, § 1.

The 2019 amendment, effective July 1, 2019, provided that the bylaws of a rural electric cooperative may allow for ballots submitted by mail to be considered in establishing a quorum for voting on an issue or question; in Subsection F, after "unless the bylaws prescribe", deleted "the presence of a greater or lesser" and added "a different", after "number of members for", added "determining", and after "quorum", added "The bylaws may allow for ballots submitted by mail to be considered in establishing a quorum for the sole purpose of voting on an issue or question, the language of which is stated exactly in the notices and on the ballots provided to all members."

The 1983 amendment rewrote Subsection A, substituted "bylaws or, if not contrary to the bylaws, by the board of trustees" for "bylaw" in Subsection B, inserted "by petition signed" and substituted "percent" for "per centum (10%)" in Subsection C, deleted "and the meeting shall be held at the place as may be designated in the petition" at the end of Subsection C and, in Subsection D, inserted "and special" and the language beginning with "whether general" and ending with "Cooperative Act" in the first sentence, and "general" in the second sentence and added the language beginning with "and all meetings" at the end of the second sentence. The 1983 amendment also, in Subsection E, added the second sentence and rewrote the first sentence; in Subsection F, substituted "constitutes" for "shall constitute" and "or lesser number of" for "of the" in the first sentence, inserted "in person" in the second sentence and added the last sentence; in Subsection G, substituted "provided that" for "but" and "provide for voting by proxy or by mail, the bylaws shall prescribe" for "so provide, may also be by proxy or by mail; they shall also prescribe" in the second sentence, deleted "In any event" at the beginning of the third sentence; and added Subsection H.

ANNOTATIONS

Statutes, articles of incorporation, bylaws, application and certificate are contract. — Sections 62-15-1 to 62-15-32 NMSA 1978, together with the articles of incorporation and the bylaws of the cooperative, the application made by the plaintiff and the certificate of membership issued to him, constituted the contract between him and the cooperative. *King v. Farmers' Elec. Coop., Inc.*, 1952-NMSC-073, 56 N.M. 552, 246 P.2d 1041.

Member is bound by bylaws. — A member, in view of provision in his application agreeing to comply with and to be bound by provisions of the charter and bylaws of the cooperative, will, when such bylaws are reasonable, and enacted under properly delegated authority, be bound thereby. *King v. Farmers' Elec. Coop., Inc.*, 1952-NMSC-073, 56 N.M. 552, 246 P.2d 1041.

A member of the cooperative is not in position to challenge the validity of its bylaws, is presumed to know contents of its charter and bylaws and, having agreed, if accepted as a member, to abide by all its rules, regulations and bylaws, cannot be permitted to repudiate the same. *King v. Farmers' Elec. Coop., Inc.*, 1952-NMSC-073, 56 N.M. 552, 246 P.2d 1041.

Refusal of easement for line forfeits membership. — Member's refusal to grant needed right-of-way easement for transmission line, ipso facto, worked a forfeiture of his membership and abrogation of the contract for supplying member with electric service. *King v. Farmers' Elec. Coop., Inc.*, 1952-NMSC-073, 56 N.M. 552, 246 P.2d 1041.

Law reviews. — For note, "Corporate Law – Formulating and Applying a 'Proper Purpose' Analysis to a Books and Records Request – *Schein v. Northern Rio Arriba Electric Cooperative*," see 28 N.M. L. Rev. 133 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 13 to 15, 21 to 23, 25, 26. 43 C.J.S. Industrial Cooperative Societies §§ 7, 11.

62-15-9. Board of trustees; suits.

A. The business and affairs of a cooperative shall be managed by a board of not less than five trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The bylaws shall prescribe the number of trustees, the terms of the trustees and the manner of their election by the members, their qualifications, other than those provided for in the Rural Electric Cooperative Act, the manner of holding meetings of the board of trustees

and of the election of successors to trustees who resign, die or otherwise are incapable of acting. The bylaws may provide for the removal of trustees from office and for the election of their successors and for the classification of trustees by terms of office. Without approval of the members, trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation. The bylaws may, however, provide that a fixed per diem fee and advancement, reimbursement or a per diem amount in lieu of reasonably incurred expenses may be allowed to each trustee for attendance at each meeting of the board of trustees and of a committee thereof and for the performance of other cooperative business when such has had prior approval of the board of trustees.

B. The trustees of a cooperative named in any articles of incorporation, consolidation, merger or conversion shall hold office until the next following annual meeting of the members or until their successors have been elected and qualified.

C. A majority of the board of trustees constitutes a quorum.

D. If a husband and wife hold joint membership in a cooperative, either one, but not both, may be elected a trustee.

E. If the bylaws so provide, the board of trustees, by resolution adopted by a majority of the full board of trustees, may designate from among its members an executive committee and one or more other committees, except no such committee shall have authority to take any action on behalf of the board of trustees to distribute patronage refunds or in any matter which, under the articles of incorporation, bylaws or the Rural Electric Cooperative Act, requires the approval of the cooperative's members. Neither the designation of any such committee, the delegation thereto of authority nor action by such committee pursuant to such authority shall alone constitute compliance by any trustee not a member of the committee in question with the trustee's responsibility to act in accordance with the standard of conduct prescribed by Subsection E of this section.

F. Unless otherwise provided in the bylaws, any action required by the Rural Electric Cooperative Act to be taken at a meeting of the board of trustees, or any action which may be taken at a meeting of the board of trustees or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the trustees or all of the committee members, as the case may be. The consent shall have the same effect as a unanimous vote.

G. The board of trustees may exercise all of the powers of a cooperative except such as are conferred upon the members by the Rural Electric Cooperative Act or its articles of incorporation or bylaws.

H. No action shall be brought against a trustee as such or against the cooperative in its right unless the plaintiff was a member of record at the time of the transaction complained of and the complaint is verified and alleges with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the board of trustees and the reasons for the plaintiff's failure to obtain the action or for not making the effort. If the cooperative undertakes an investigation upon receipt of a demand by plaintiff for action, or following commencement of suit, the court may stay an action commenced as the circumstances reasonably require. If the court finds the action was brought without reasonable cause, it may require the plaintiff to pay defendants the reasonable expenses, including counsel fees, incurred by them in the defense of such action or to reimburse the cooperative for any indemnification provided a defendant pursuant to the Rural Electric Cooperative Act or the cooperative's bylaws.

History: Laws 1939, ch. 47, § 9; 1941 Comp., § 48-409; 1953 Comp., § 45-4-9; Laws 1957, ch. 200, § 1; 1987, ch. 36, § 3.

The 1987 amendment, effective June 19, 1987, in Subsection A, in the third sentence added "and for the classification of trustees by terms of office" at the end and, in the fifth sentence, substituted "a fixed per diem fee and advancement, reimbursement or a per diem amount in lieu of reasonably incurred expenses" for "a fixed fee and expenses of attendance, if any" and added the material at the end following "board of trustees"; added present Subsections E, F, and H; redesignated former Subsection E as present Subsection G; and made

minor changes in language and punctuation throughout the section.

ANNOTATIONS

Trustee may serve as director. — A member of the board of trustees of a rural electric cooperative incorporated under New Mexico's Rural Electric Cooperative Act (Sections 62-15-1 to 62-15-32 NMSA 1978) may serve as the salaried director of the cooperative with approval of the members. 1971 Op. Att'y Gen. No. 71-111.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 19, 22.

43 C.J.S. Industrial Cooperative Societies §§ 6, 8.

62-15-9.1. Duties of trustees.

A trustee shall perform his duties as a trustee, including his duties as a member of any committee of the board upon which the trustee may serve, in good faith, in a manner the trustee believes to be in or not opposed to the best interests of the cooperative and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a trustee shall be entitled to rely on factual information, opinions, reports or statements including financial statements and other financial data in each case prepared or presented by:

A. one or more officers or employees of the cooperative whom the trustee reasonably believes to be reliable and competent in the matters presented;

B. counsel, public accountants or other persons as to matters which the trustee reasonably believes to be within such persons' professional or expert competence;

C. a committee of the board upon which the trustee does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws as to matters within its designated authority, which committee the trustee reasonably believes to merit confidence, but the trustee shall not be considered to be acting in good faith if the trustee has knowledge concerning the matter in question that would cause such reliance to be unwarranted; or

D. any bulletin or other directive of the rural electrification administration, or successor agency, material to the matter in question.

A person who so performs such duties shall have no liability to the cooperative or to its members by reason of being or having been a trustee of the cooperative.

History: Laws 1987, ch. 238, § 13.

ANNOTATIONS

Law reviews.— For article, "Statutory Adoption of Several Liability in New Mexico: A Commentary and Quasi-Legislative History," see 18 N.M.L. Rev. 483 (1988).

62-15-9.2. Limitation on liability and indemnification of officers and trustees.

A. Cumulative to any other provision of the Rural Electric Cooperative Act as now or hereafter enacted, the bylaws of a cooperative may provide that a trustee shall not be personally liable to the cooperative or to its members for monetary damages for breach of fiduciary duty as a trustee unless:

(1) the trustee has breached or failed to perform the duties of his office in compliance with Section 62-15-9.1 NMSA 1978; and

(2) the breach or failure to perform constitutes willful misconduct or reckless [recklessness]; or in the case of a trustee of a cooperative actively engaged in the generation and transmission of electric power, negligence, willful misconduct or recklessness. Such a provision in the bylaws shall, however, only eliminate the liability of a trustee for action taken as a trustee or any failure to take action as a trustee at meetings of the board of trustees or of a committee of the board of trustees, or by virtue of action of the trustees without a meeting as may be permitted by the Rural Electric Cooperative Act as now or hereafter enacted, on or after the date when such provision in the bylaws becomes effective.

B. Cumulative to any other power granted by the Rural Electric Cooperative Act as now or hereafter enacted, each cooperative shall have the power to indemnify any trustee or officer or former trustee or officer of the cooperative or any person serving or having served at the request of the cooperative as a director, trustee, officer, partner, trustee, employee or agent of any cooperative, corporation, nonprofit corporation, partnership, joint venture, trust, unincorporated association, other incorporated or unincorporated enterprise or employee benefit plan or trust against reasonable expenses, costs and attorneys' fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of holding or having held such an office or position. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The trustee, officer or other person shall not be indemnified if he shall be adjudged to be liable on the basis that he breached

or failed to perform the duties of his office or position and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification to such persons may be allowed for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding, provided that the trustee, officer or other person shall reimburse the cooperative if it is subsequently determined that he was not entitled to indemnification. Each cooperative may make any other indemnification as authorized by the articles of incorporation or bylaws or by resolution adopted by the members after notice.

History: Laws 1987, ch. 238, § 14.

Bracketed material: — The bracketed material was inserted by the compiler and is not part of the law.

62-15-10. Voting districts.

A. Notwithstanding any other provision of the Rural Electric Cooperative Act, the bylaws of a cooperative may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two or more voting districts and that, in respect of each such voting district:

- (1) a designated number of trustees shall be elected by the members residing in that district;
- (2) a designated number of delegates shall be elected by the members residing in that district; or
- (3) both trustees and delegates shall be elected by the members residing in that district.

B. The bylaws shall prescribe the manner in which voting districts, and the members, delegates and trustees thereof, if any, elected therefrom, shall function. The bylaws shall also set forth the powers of the delegates, which may include the power to elect trustees. No delegate who has voted by proxy or by mail on an issue or question shall vote in person on the same issue or question.

C. Voting by members at voting district meetings shall be in person, unless otherwise provided in the bylaws. The bylaws shall prescribe the conditions under which voting by mail shall be exercised.

History: Laws 1939, ch. 47, § 10; 1941 Comp., § 48-410; 1953 Comp., § 45-4-10; 2011, ch. 38, § 1; 2019, ch. 131, § 2.

The 2019 amendment, effective July 1, 2019, provided that no delegate of a rural electric cooperative who has voted by proxy or by mail on an issue or question shall vote in person on the same issue or question; in Subsection B, after "No delegate", deleted "at any meeting shall vote" and added "who has voted", and after "by proxy or by mail", added "on an issue or question shall vote in person on the same issue or question".

The 2011 amendment, effective June 17, 2011, added Subsection C to require that voting at voting district meetings be in person unless the bylaws provide otherwise, and to permit the bylaws to provide for voting by mail.

ANNOTATIONS

Amendment vote by districts rather than at general meeting deemed legal. — It is legal to provide for

the amendment of bylaws by a majority vote of the members voting by districts, rather than at a general meeting of all the members. This interpretation does no violence to Section 62-15-7 NMSA 1978, since that section mentions "regular annual meeting" and "special meeting," and does not exclude a regular annual meeting or special meeting of a voting district. The interpretation is supported by the liberal construction required to be given these statutes under Section 62-15-32 NMSA 1978. 1961-62 Op. Att'y Gen. No. 61-62.

Rural electric cooperative cannot take away power of majority. — A rural electric cooperative may provide for the amendment of its bylaws by a vote taken at a series of meetings of voting districts rather than at a general meeting of all the members, but, in so doing, it cannot take away the power of the majority of members to adopt, amend or repeal the bylaws. 1961-62 Op. Att'y Gen. No. 61-62.

62-15-11. Officers.

The officers of a cooperative shall consist of a president, vice president, secretary and treasurer, who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents or employees as it shall deem necessary or advisable and shall prescribe the

powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

History: Laws 1939, ch. 47, § 11; 1941 Comp., § 48-411; 1953 Comp., § 45-4-11.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references: — 18 Am. Jur. 2d Cooperative Associations §§ 18, 19, 49.
43 C.J.S. Industrial Cooperative Societies §§ 6, 8.

62-15-12. Amendment of articles of incorporation.

A. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) the proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting on the amendment at that meeting; and

(2) upon approval by the members, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act and shall state:

- (a) the name of the cooperative;
- (b) the address of its principal office;
- (c) the date of the filing of its articles of incorporation in the office of the secretary of state; and
- (d) the amendment to its articles of incorporation.

The president or vice president executing the articles of amendment shall make and annex thereto an affidavit stating that the provisions of this section were duly complied with. The articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act.

B. A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office, executed and acknowledged by its president or vice president under its seal attested by its secretary, in the office of the secretary of state and in the office of the county clerk in each county in this state in which its articles of incorporation or any prior certificate of change of principal office was filed. The cooperative shall, within thirty days after the filing of the certificate of change of principal office in the office of the county clerk, file in the county clerk's office certified copies of its articles of incorporation and all amendments thereto, if they are not already on file in the county clerk's office.

History: Laws 1939, ch. 47, § 12; 1941 Comp., § 48-412; 1953 Comp., § 45-4-12; 2013, ch. 75, § 27.

The 2013 amendment, effective July 1, 2013, required that the articles of incorporation of a cooperative recite the date a certificate of change of office was filed with the secretary of state; in Subparagraph (c) of Paragraph (2) of Subsection A, after "in the office of the", deleted "state

corporation commission" and added "secretary of state"; in the second unlettered paragraph of Subsection A, in the second sentence, after "submitted to the", deleted "state corporation commission" and added "secretary of state"; and in Subsection B, in the first sentence, after "in the office of the" deleted "state corporation commission" and added "secretary of state".

62-15-13. Consolidation.

Any two or more cooperatives, each of which is designated a "consolidating cooperative" in this section, may consolidate into a new cooperative, designated the "new cooperative" in this section, by complying with the following requirements:

A. the proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect to the consolidation shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation

shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act and shall state:

- (1) the name of each consolidating cooperative, the address of its principal office and the date of the filing of its articles of incorporation in the office of the secretary of state;
- (2) the name of the new cooperative and the address of its principal office;
- (3) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;
- (4) the terms and conditions of the consolidation and the mode of carrying it into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of membership in respect of the converted memberships; and
- (5) any provisions not inconsistent with the Rural Electric Cooperative Act deemed necessary or advisable for the conduct of the business and affairs of the new cooperative;

B. the proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members of each consolidating cooperative at any annual or special meeting, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of a simple majority of those members of each consolidating cooperative voting thereon at that meeting; and

C. upon approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice president, and its seal shall be affixed thereto and attested by its secretary. The president or vice president of each consolidating cooperative executing the articles of consolidation shall make and annex to the articles of incorporation an affidavit stating that the provisions of this section were duly complied with by that cooperative. The articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in Section 62-15-19 NMSA 1978.

History: Laws 1939, ch. 47, § 13; 1941 Comp., § 48-413; 1953 Comp., § 45-4-13; Laws 1979, ch. 64, § 1; 2013, ch. 75, § 28.

The 2013 amendment, effective July 1, 2013, required that articles of consolidation state the date the articles of incorporation were filed with the secretary of state; in Paragraph (1) of Subsection A, after "in the office of the", deleted "state corporation commission" and added

"secretary of state"; and in Subsection C, in the third sentence, after "submitted to the", deleted "state corporation commission" and added "secretary of state".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references: — 43 C.J.S. Industrial Cooperative Societies §§ 6, 13.

62-15-14. Merger.

Any one or more cooperatives, each of which is designated a "merging cooperative" in this section, may merge into another cooperative, designated the "surviving cooperative" in this section, by complying with the following requirements:

A. the proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect to the merger shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act and shall state:

- (1) the name of each merging cooperative, the address of its principal office and the date of the filing of its articles of incorporation in the office of the secretary of state;
- (2) the name of the surviving cooperative and the address of its principal office;
- (3) a statement that the merging cooperatives elect to be merged into the surviving cooperative;
- (4) the terms and conditions of the merger and the mode of carrying it into effect, including the manner and basis of converting the memberships in the merging cooperatives into

memberships in the surviving cooperative and the issuance of certificates of membership in respect of the converted memberships; and

(5) any provisions not inconsistent with the Rural Electric Cooperative Act deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative;

B. the proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives, parties to the proposed merger, shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of a simple majority of those members of each cooperative voting thereon at that meeting; and

C. upon approval by the members of the respective cooperatives, parties to the proposed merger, articles of merger in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice president, and its seal shall be affixed thereto and attested by its secretary. The president or vice president of each cooperative executing the articles of merger shall make and annex to the articles of merger an affidavit stating that the provisions of this section were duly complied with by such cooperative. The articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in Section 62-15-19 NMSA 1978.

History: Laws 1939, ch. 47, § 14; 1941 Comp., § 48-414; 1953 Comp., § 45-4-14; Laws 1979, ch. 64, § 2; 2013, ch. 75, § 29.

The 2013 amendment, effective July 1, 2013, required that articles of merger state the date the articles of incorporation were filed with the secretary of state; in Paragraph (1) of Subsection A, after "in the office of the", deleted "state corporation commission" and added "secretary of state"; and in Subsection C, in the third sentence, after "submitted to the", deleted "state corporation commission" and added "secretary of state".

ANNOTATIONS

Power of eminent domain. — A corporation organized for the primary purpose of supplying electric power or energy to rural areas on a cooperative basis, although organized under the laws of another state and resulting from an interstate merger, is a rural electric cooperative under the Rural Electric Cooperative Act, and thus has the power of eminent domain under this section. *Tri-State Generation & Transmission Ass'n v. King*; 2003-NMSC-029, 134 N.M. 467, 78 P.3d 1226.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Industrial Cooperative Societies §§ 3, 6, 13.

62-15-15. Effect of consolidation or merger.

The effect of consolidation or merger shall be as follows:

A. the several cooperatives, parties to the consolidation or merger, shall be a single cooperative, which in the case of a consolidation shall be the new cooperative provided for in the articles of consolidation and in the case of a merger shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives, parties to the consolidation or merger, except the new or surviving cooperative shall cease;

B. the new or surviving cooperative shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of the Rural Electric Cooperative Act. It shall possess all the rights, privileges, immunities and franchises, of a public as well as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account and all other choses in action of each of the consolidating or merging cooperatives, and every interest of or belonging or due to each of the cooperatives consolidated or merged shall be deemed to be transferred to and vested in the new or surviving cooperative without further act or deed. The title to any real estate, or any interest therein, under the laws of this state vested in any such cooperatives shall not revert or be in any way impaired by reason of the consolidation or merger;

C. the new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives consolidated or merged, and any claim existing, or action or proceeding pending, by or against any of such cooperatives may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving cooperative may be substituted in its place;

D. neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by the consolidation or merger; and

in the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative; and in the case of a merger, the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes in the articles of incorporation are provided for in the articles of merger.

History: Laws 1939, ch. 47, § 15; 1941 Comp., § 48-415; 1953 Comp., § 45-4-15; 1998, ch. 46, § 2.

The 1998 amendment, effective March 6, 1998, in Subsection B, substituted "the Rural Electric Cooperative" for "this", deleted "as well" preceding "of", inserted "well as", deleted "furthermore all and" preceding "every", deleted "so" following "cooperatives", deleted "taken and" following "be", and substituted "or" for "to"; in Subsection E,

substituted "in the articles of incorporation" for "therein"; and made minor stylistic changes throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Industrial Cooperative Societies § 2.

62-15-16. Conversion of existing corporations.

Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy in rural areas may be converted into a cooperative and become subject to the Rural Electric Cooperative Act with the same effect as if originally organized under that act by complying with the following requirements:

A. the proposition for the conversion of the corporation into a cooperative and proposed articles of conversion to give effect to the conversion shall be first approved by the board of trustees or the board of directors of the corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act and shall state:

- (1) the name of the corporation prior to its conversion into a cooperative;
- (2) the address of the principal office of the corporation;
- (3) the date of the filing of articles of incorporation of the corporation in the office of the secretary of state;
- (4) the statute under which the corporation was organized;
- (5) the name assumed by the corporation in compliance with the provisions of the Rural Electric Cooperative Act;
- (6) a statement that the corporation elects to become a cooperative nonprofit membership corporation subject to the Rural Electric Cooperative Act;
- (7) the manner and basis of converting either memberships in or shares of stock of the corporation into membership in the converted corporation; and
- (8) any provisions not inconsistent with the Rural Electric Cooperative Act deemed necessary or advisable for the conduct of the business and affairs of the corporation;

B. the proposition for the conversion of the corporation into a cooperative and the proposed articles of conversion approved by the board of trustees or board of directors of the corporation shall then be submitted to a vote of the members or stockholders of the corporation at any duly held annual or special meeting, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of the corporation into a cooperative and the proposed articles of conversion, with such amendments thereto as the members or stockholders of the corporation choose to make, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of the corporation voting thereon at that meeting or, if the corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of the corporation represented at that meeting;

C. upon approval by the members or stockholders of the corporation, articles of conversion in the form approved by the members or stockholders shall be executed and acknowledged on behalf of the corporation by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The president or vice president executing the articles of conversion on behalf of the corporation shall make and annex to the articles of conversion an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of the corporation into a cooperative and the articles of conversion were duly complied with. The articles of conversion and affidavit

shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act; and

D. the term "articles of incorporation" as used in the Rural Electric Cooperative Act shall be deemed to include the articles of conversion of a converted corporation.

History: Laws 1939, ch. 47, § 16; 1941 Comp., § 48-416; 1953 Comp., § 45-4-16; 2013, ch. 75, § 30.

The 2013 amendment, effective July 1, 2013, required that articles of conversion state the date the articles of incorporation were filed with the secretary of state; in Paragraph (3) of Subsection A, after "in the office of the", deleted "state corporation commission" and added "secretary of state"; and in Subsection C, in the third sentence, after

"submitted to the", deleted "state corporation commission" and added "secretary of state".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 5 to 9.
43 C.J.S. Industrial Cooperative Societies § 6.

62-15-17. Initiative by members.

Notwithstanding any other provision of this act [62-15-1 to 62-15-32 NMSA 1978], any proposition embodied in a petition signed by not less than 10 per centum (10%) of all members of the cooperative, together with any document submitted with such petition to give effect to the proposition, shall be submitted to the members of a cooperative either at a special meeting of the members held within forty-five (45) days after the presentation of such petition or, if the date of the next annual meeting of members falls within ninety (90) days after such presentation or if the petition so requests, at such annual meeting. The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this act. Any affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this act shall, in such case, be modified to show compliance with the provisions of this section.

History: Laws 1939, ch. 47, § 17; 1941 Comp., § 48-417; 1953 Comp., § 45-4-17.

62-15-18. Dissolution.

A. A cooperative that has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed and acknowledged on behalf of the cooperative by a majority of the incorporators, which state:

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) the date of its incorporation;
- (4) that the cooperative has not commenced business;

(5) that the amount, if any, actually paid in on account of membership fees, less any part of that money disbursed for necessary expenses, has been returned to those entitled to it and that all easements have been released to the grantors;

- (6) that no debt of the cooperative remains unpaid; and

- (7) that a majority of the incorporators elect that the cooperative be dissolved.

The articles of dissolution shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act.

B. A cooperative that has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

- (1) the board of trustees shall first recommend that the cooperative be dissolved voluntarily, and the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth that proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of all of the members of the cooperative;

(2) upon such approval, a certificate of election to dissolve, designated the "certificate" in this section, shall be executed and acknowledged on behalf of the cooperative by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The certificate shall state:

- (a) the name of the cooperative;
- (b) the address of its principal office;
- (c) the names and addresses of its trustees; and
- (d) the total number of members of the cooperative and the number of members who voted for and against the voluntary dissolution of the cooperative.

The president or vice president executing the certificate shall make and annex to it an affidavit stating that the provisions of this subsection were duly complied with. The certificate and affidavit shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act;

(3) upon the filing of the certificate and affidavit with the secretary of state, the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state;

(4) after the filing of the certificate and affidavit with the secretary of state, the board of trustees shall immediately cause notice of the winding up of proceedings to be mailed to each known creditor and claimant and to be published once a week for two successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located;

(5) the board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy and discharge its debts, obligations and liabilities and do all other things required to liquidate its business and affairs. After paying or adequately providing for the payment of all its debts, obligations and liabilities, the board of trustees shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each member during the seven years next preceding the date of filing of the certificate or, if the cooperative was not in existence for that period, during the period of its existence; and

(6) when all debts, liabilities and obligations of the cooperative have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the cooperative have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution that shall thereupon be executed and acknowledged on behalf of the cooperative by its president or vice president, and its corporate seal shall be affixed thereto and attested by its secretary. The articles of dissolution shall recite in the caption that they are executed pursuant to the Rural Electric Cooperative Act and shall state:

- (a) the name of the cooperative;
- (b) the address of the principal office of the cooperative;
- (c) that the cooperative has delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of that office;
- (d) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;
- (e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and
- (f) that there are no actions or suits pending against the cooperative. The president or vice president executing the articles of dissolution shall make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with.

The articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in the Rural Electric Cooperative Act.

History: Laws 1939, ch. 47, § 18; 1941 Comp., § 48-418; 1953 Comp., § 45-4-18; 1987, ch. 36, § 4; 2013, ch. 75, § 31.

Cross references. — For legal newspapers, see 14-11-2 NMSA 1978.

The 2013 amendment, effective July 1, 2013, required that articles of dissolution be delivered to the secretary of state; in Subsection A, in the introductory sentence, after "delivering to the", deleted "state corporation commission" and added "secretary of state"; in Subsection A(1), in the unlettered paragraph following Paragraph (7), after "submitted to the", deleted "state corporation commission" and added "secretary of state"; in Subsection B(3), in the unlettered paragraph following Subparagraph (d) of Paragraph (2), in the second sentence, after "submitted to the", deleted "state corporation commission" and added "secretary of state"; in Paragraph (3) of Subsection B, after "affidavit with the", deleted "state corporation commission" and added "secretary of state" and after filed by the", deleted "state corporation commission" and added "secretary of state"; in Paragraph (4) of Subsection B, after "affidavit with the", deleted "state corporation commission" and added "secretary of state"; in Subparagraph (c) of Paragraph (6) of Subsection B, after "delivered to the", deleted "state corporation commission" and added "secretary of state" and after "filed by the", deleted "state corporation commission" and added "secretary of state";

and in Subsection B, in the unlettered paragraph following Subparagraph (f) of Paragraph (6), after "submitted to the", deleted "state corporation commission" and added "secretary of state".

The 1987 amendment, effective June 19, 1987, in Subsection B, in the last sentence of Paragraph (1) substituted "all of the members of the cooperative" for "those voting thereon at such meeting," in Paragraph (3) substituted "state corporation commission" for "secretary of state," in Paragraph (5) inserted "the board of trustees" in the second sentence preceding "shall distribute the remainder of its property," and made minor changes in language and punctuation throughout the section.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations § 22.

Distribution of funds by nonprofit corporation absent dissolution, 51 A.L.R.3d 1318.

43 C.J.S. Industrial Cooperative Societies §§ 2, 3.

62-15-19. Filing of articles.

Articles of incorporation, amendment, consolidation, merger, conversion or dissolution, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of the Rural Electric Cooperative Act, shall be presented to the secretary of state for filing in the records of that office. If the secretary of state finds that the articles presented conform to the requirements of that act, the secretary of state shall, upon the payment of the fees as provided in that act, file the articles in the records of the secretary of state's office, and upon such filing the incorporation, amendment, consolidation, merger, conversion or dissolution provided for in those articles shall be in effect. The secretary of state, immediately upon the filing in the secretary of state's office of any articles pursuant to the Rural Electric Cooperative Act, shall transmit a certified copy of the articles to the county clerk of the county in which the principal office of each cooperative or corporation affected by the incorporation, amendment, consolidation, merger, conversion or dissolution is located. The clerk of any county, upon receipt of any such certified copy, shall file and index it in the records of the clerk's office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate the articles. The provisions of this section shall apply to certificates of election to dissolve and affidavits of compliance executed pursuant to Paragraph (2) of Subsection B of Section 62-15-18 NMSA 1978.

History: Laws 1939, ch. 47, § 19; 1941 Comp., § 48-419; 1953 Comp., § 45-4-19; 2013, ch. 75, § 32.

The 2013 amendment, effective July 1, 2013, required that articles be filed with the secretary of state; in the first sentence, after "presented to the", deleted "state corporation commission" and added "secretary of state"; in the second sentence, at the beginning of the sentence, deleted "state corporation commission shall find" and added "secretary of state finds", after "requirements of that act",

deleted "he" and added "the secretary of state", and after "in the records of", deleted "his" and added "the secretary of state"; and in the third sentence, at the beginning of the sentence, deleted "state corporation commission" and added "secretary of state", after "upon filing in", deleted "his" and added "the secretary of state's"; and in the fourth sentence, after "the failure of the", deleted "state corporation commission" and added "secretary of state".

62-15-20. Refunds to members.

Revenues of a cooperative for any fiscal year in excess of the amount thereof necessary:

- A. to defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;
- B. to pay interest and principal obligation of the cooperative coming due in such fiscal year;
- C. to finance, or to provide a reserve for the financing of, the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;
- D. to provide a reasonable reserve for working capital;

E. to provide a reserve for the payment of indebtedness of the cooperative maturing more than one (1) year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and

F. to provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative, shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

History: Laws 1939, ch. 47, § 20; 1941 Comp., § 48-420; 1953 Comp., § 45-4-20.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 19, 22, 23.

62-15-21. Disposition of property.

A cooperative may not sell, convey, lease, exchange, transfer or otherwise dispose of all or any substantial portion of its property unless such sale, conveyance, lease, exchange, transfer or other disposition is authorized at a duly held meeting of the members thereof by the affirmative vote of not less than two-thirds of all of the members of the cooperative, and unless the notice of such proposed sale, lease or other disposition shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, or any other provisions of law, the board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging, assignment for security purposes or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative.

History: Laws 1939, ch. 47, § 21; 1941 Comp., § 48-421; 1953 Comp., § 45-4-21; Laws 1971, ch. 8, § 2.

Severability. — Laws 1971, ch. 8, § 3, provided for the severability of the act if any part or application thereof is held invalid.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 43 C.J.S. Industrial Cooperative Societies § 8.

62-15-22. Nonliability of members for debts of cooperative.

The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative and no member shall be liable or responsible for any debts of the cooperative.

History: Laws 1939, ch. 47, § 22; 1941 Comp., § 48-422; 1953 Comp., § 45-4-22.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations § 32.

62-15-23. Recordation of mortgages.

Any mortgage, deed of trust or other instrument executed by a cooperative or foreign corporation transacting business in this state, pursuant to this act [62-15-1 to 62-15-32 NMSA 1978], which, by its terms, creates a lien upon real and personal property then owned or after-acquired, and which is recorded as a mortgage of real property in any county in which such property is located or is to be located, shall have the same force and effect as if the mortgage, deed of trust or other instrument were also recorded or filed in the proper office in such county as a mortgage of personal

property. Recordation of any such mortgage, deed of trust or other instrument shall cause the lien thereof to attach to all after-acquired property of the mortgagor of the nature herein described as being mortgaged or pledged thereby immediately upon the acquisition thereof by the mortgagor, and such lien shall be superior to all claims of creditors of the mortgagor and purchasers of such property and to all other liens, except liens of prior record, affecting such property.

History: Laws 1939, ch. 47, § 23; 1941 Comp., § 48-423; 1953 Comp., § 45-4-23.

62-15-24. Waiver of notice.

Whenever any notice is required to be given under the provisions of this act [62-15-1 to 62-15-32 NMSA 1978] or under the provisions of the articles of incorporation or bylaws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice. If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

History: Laws 1939, ch. 47, § 24; 1941 Comp., § 48-424; 1953 Comp., § 45-4-24.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 33, 34.

62-15-25. Trustees, officers or members; notaries.

No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by reason of being an officer, director or member of such cooperative.

History: Laws 1939, ch. 47, § 25; 1941 Comp., § 48-425; 1953 Comp., § 45-4-25.

62-15-26. Foreign corporations.

Any corporation organized on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in a state adjacent to this state shall be permitted to extend its lines into and to transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state. Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice president under its corporate seal attested by its secretary, designate the secretary of state as its agent to accept service of process in its behalf. If any process is served upon the secretary of state, the secretary of state shall forthwith forward the process by registered mail to the corporation at the address specified in such instrument. Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts. Any such foreign corporation may secure its notes, bonds or other evidences of indebtedness by mortgage, pledge, deed of trust or other encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets or franchises located or to be located in this state and upon the revenues and income.

History: Laws 1939, ch. 47, § 26; 1941 Comp., § 48-426; 1953 Comp., § 45-4-26; 2013, ch. 75, § 33.

The 2013 amendment, effective July 1, 2013, required that foreign corporations designate the secretary of state as agent to accept service of process; in the second

sentence, after "designate the", deleted "state corporation commission" and added "secretary of state"; and in the third sentence, after "is served upon the", deleted "state corporation commission" and added "secretary of state".

62-15-26.1. Distribution cooperative utilities organized in other states; application.

A distribution cooperative utility organized pursuant to the laws of another state and providing bundled services in this state on April 1, 1999 to not more than twenty percent of its total customers may file an application with the commission seeking approval of its election to be governed by the laws related to electric restructuring of the state where the utility was organized. The commission shall approve the application if the distribution cooperative utility:

- A. does not provide supply service to other than its service customers in this state; and
- B. remains subject to the jurisdiction and authority of the commission for bundled service provided in this state.

History: Laws 2003, ch. 336, § 5. 2003, ch. 336, § 5, was effective June 20, 2003, 90 days after adjournment of the legislature.

Effective dates. — Laws 2003, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art.

62-15-27. Fees.

The secretary of state shall charge and collect for:

- A. filing articles of incorporation, five dollars (\$5.00);
- B. filing articles of amendment, three dollars (\$3.00);
- C. filing articles of consolidation or merger, five dollars (\$5.00);
- D. filing articles of conversion, five dollars (\$5.00);
- E. filing certificate of election to dissolve, two dollars (\$2.00);
- F. filing articles of dissolution, three dollars (\$3.00); and
- G. filing certificate of change of principal office, one dollar (\$1.00).

History: Laws 1939, ch. 47, § 27; 1941 Comp., § 48-427; 1953 Comp., § 45-4-27; 2013, ch. 75, § 34.

The 2013 amendment, effective July 1, 2013, prescribed fees that the secretary of state is required to charge; and in the introductory sentence, deleted "state corporation commission" and added "secretary of state".

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Cooperative Associations §§ 34, 40, 44, 46.

62-15-28. Taxation.

Cooperative and foreign corporations transacting business in this state pursuant to the provisions of the Rural Electric Cooperative Act shall pay annually, on or before July 1, to the state corporation commission [public regulation commission] a tax of ten dollars (\$10.00) for each one hundred persons or fraction thereof to whom electricity is supplied within this state, which tax shall be in lieu of all other taxes except those provided in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978]; provided, however, that in the event a contract has been entered into by a rural electric cooperative and a power consumer prior to February 1, 1961 and such contract does not contain an escalator clause providing for an increase for added tax liability on the cooperative, then the sale to such power consumer shall be exempt until the expiration, extension or renewal of the contract.

History: Laws 1939, ch. 47, § 28; 1941, ch. 195, § 1; 1941 Comp., § 48-428; 1953 Comp., § 45-4-28; Laws 1961, ch. 236, § 1; 1966, ch. 58, § 1; 1975, ch. 263, § 7; 1982, ch. 18, § 24.

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

Nonseverability clauses. — Laws 1975, ch. 263, § 10, provided that the act is not intended to be severable, and

that if any part thereof should be declared unconstitutional, the entire act should be declared void.

Laws 1975, ch. 263, § 9, was declared invalid under the supremacy clause of the United States constitution in *Arizona Pub. Serv. Co. v. Snead*, 441 U.S. 141, 99 S. Ct. 1629, 60 L. Ed. 2d 106 (1979).

ANNOTATIONS

Sales by rural electric cooperative exempt from school tax. — This statutory provision must be considered to exempt from the school tax the sale of electricity

by a rural electric cooperative to its customers. Since the legal incidence of the emergency school tax is upon the vendor of the goods or services as a tax with respect to his privilege of doing business, it is clearly immaterial to the consideration of the first inquiry that the cooperative, the purchaser of the goods or services, may not itself be subject directly to the tax because of this statute. 1957-58 Op. Att'y Gen. No. 57-302.

Liability from compensating tax for out-of-state purchases. — Rural electric administration cooperatives are not liable for the payment of compensating tax on their

out-of-state purchases of materials for use or consumption within the state. 1961-62 Op. Att'y Gen. No. 62-131.

Law reviews. — For article, "Taxation of Electricity Generation: The Economic Efficiency and Equity Bases for Regionalism Within the Federal System," see 20 Nat. Res. J. 877 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation § 514.

16C C.J.S. Constitutional Law § 881; 43 C.J.S. Industrial Cooperative Societies § 5; 84 C.J.S. Taxation § 251.

62-15-29. Repealed.

Repeals. — Laws 1998, ch. 108, § 81 repealed 62-15-29 NMSA 1978, as enacted by Laws 1939, ch. 47, § 29, relating to exemption from jurisdiction of the state corporation

commission, effective January 1, 1999. For provisions of former section, see the 1997 NMSA 1978 on *NMOne Source.com*.

62-15-30. Securities Act exemption.

The provisions of the Securities Act, Chapter 44, Session Laws of New Mexico, 1921, shall not apply to the issuance of any note, bond or other evidence of indebtedness issued, executed and delivered by any cooperative to the United States of America or any agency or instrumentality thereof. The provisions of said Securities Act shall not apply to the issuance of membership certificates by any cooperative.

History: Laws 1939, ch. 47, § 30; 1941 Comp., § 48-430; 1953 Comp., § 45-4-30.

Compiler's notes. — Laws 1955, ch. 131, § 20, repeals the Securities Act, Laws 1921, ch. 44, referred to in this

section. For present Securities Act of New Mexico, see 58-13B-1 to 58-13B-57 NMSA 1978.

62-15-31. "Rural area," "person" and "member" defined.

A. "Rural area" means any area not included within the boundaries of any municipality having a population in excess of five thousand persons; provided that a municipality having a population of more than five thousand persons shall not cease to be included within the term "rural area" if at the time of the commencement of the cooperative's or its predecessor's operation therein the population of the municipality was less than five thousand persons and the municipality has been and continues to be served by a cooperative; provided, however, that the population of any municipality shall not be included in any rural area if said municipality has a municipally owned plant or other operating noncooperative utility; and, provided further, that any cooperative shall not be permitted to operate in any municipality without first having obtained a franchise from the governing authorities.

B. "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic.

C. "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to a joint membership.

History: Laws 1939, ch. 47, § 31; 1941 Comp., § 48-431; Laws 1945, ch. 9, § 1; 1947, ch. 182, § 1; 1953 Comp., § 45-4-31; Laws 1967, ch. 102, § 3.

62-15-32. Construction of act; inconsistency.

The Rural Electric Cooperative Act shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things. Nothing contained in the Rural Electric Cooperative Act shall be construed, however, to conflict with any duty to which a cooperative is subject or

with any benefit to which a cooperative is entitled under the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978]. In the event any provision of the Rural Electric Cooperative Act is held to be repugnant to any provision of the Public Utility Act or to a cooperative's inclusion as a public utility thereunder, the latter shall be controlling and the former shall be held repealed to the extent of the repugnancy. Nothing in the Public Utility Act shall be deemed to authorize interference with, abrogation or change of the rights or obligations of a party under a wholesale power supply agreement, mortgage or financing agreement to which a distribution cooperative utility is a party.

History: Laws 1939, ch. 47, § 32; 1941 Comp., § 48-432; 1953 Comp., § 45-4-32; Laws 1967, ch. 102, § 4; 2003, ch. 336, § 7.

Compiler's notes. — Laws 1939, ch. 47, § 34 repealed Laws 1937, ch. 100, and provided that the former act, relating to electric membership corporations, shall continue in effect and be applicable to corporations formed under its provisions. For provisions applicable to electric membership corporations, see Laws 1937, ch. 100. For the Public Utility Act repealing repugnant provisions of Laws 1937, ch. 100, see 62-3-2C NMSA 1978 and this section.

Cross references. — As to Public Utility Act repealing repugnant provisions of Rural Electric Cooperative Act, see 62-3-2C NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted "as amended" or "as now or hereafter amended" following "the Rural Electric Cooperative Act" and "Public Utility Act" throughout the section and added the last sentence.

ANNOTATIONS

Junior licensee not to interfere with existing system. — Laws 1937, ch. 100, § 10 means that any system of the junior licensee shall be constructed in such manner as not to materially or unreasonably interfere with any existing system. *Hale v. Farmers Elec. Membership Corp.*, 1940-NMSC-009, 44 N.M. 131, 99 P.2d 454 (decided under former law).

No liability if operating in skillful manner. — Where it was not apparent that electric membership corporation had constructed and operated its power line in other than a skillful manner in accordance with the best and most modern methods; it was not liable for inductive interference with use of telephone lines erected and in use many years prior to installation of rural electric power system. *Hale v. Farmers Elec. Membership Corp.*, 1940-NMSC-009, 44 N.M. 131, 99 P.2d 454 (decided under former law).

62-15-33. Conversion of corporations organized under Laws 1937, Chapter 100, into cooperatives under the Rural Electric Cooperative Act, as amended.

A corporation created under Laws 1937, Chapter 100 shall be converted into a cooperative authorized to do business and entitled to all privileges and immunities of a cooperative under the Rural Electric Cooperative Act, as amended, being Laws 1939, Chapter 47, as amended, upon the adoption of a resolution to such effect by its board of directors.

History: 1953 Comp., § 45-4-33, enacted by Laws 1967, ch. 102, § 1.

Compiler's notes. — Laws 1939, ch. 47, § 34, repealed Laws 1937, ch. 100.

62-15-34. Renewable portfolio standard.

A. Except as provided in Subsection E of this section, each distribution cooperative organized under the Rural Electric Cooperative Act shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply portfolio as demonstrated by its retirement of renewable energy certificates. Requirements and targets of the renewable portfolio standard are as follows:

(1) no later than January 1, 2015, renewable energy shall comprise no less than five percent of each distribution cooperative's total retail sales to New Mexico customers;

(2) the renewable portfolio standard shall increase by one percent per year thereafter until January 1, 2020, at which time the renewable portfolio standard shall be ten percent of the distribution cooperative's total retail sales to New Mexico customers;

(3) a distribution cooperative shall have the following targets and requirements for renewable energy and zero carbon resources as a percentage of the distribution cooperative's total retail sales in New Mexico:

- (a) a requirement of forty percent renewable energy by January 1, 2025;
- (b) a requirement of fifty percent renewable energy by January 1, 2030; and

(c) a target of achieving the zero carbon resource standard by January 1, 2050, composed of at least eighty percent renewable energy; provided that: 1) achieving the target is technically feasible; 2) the rural electric cooperative is able to provide reliable electric service while implementing the target; and 3) implementing the target shall not cause electric service to become unaffordable; and

(4) renewable energy resources that are in a distribution cooperative's energy supply portfolio on January 1, 2008 shall be counted in determining compliance with this section.

B. By April 30 of each year, a distribution cooperative shall file with the public regulation commission a report on its purchases and generation of renewable energy during the preceding calendar year. The report shall include the cost of the renewable energy resources purchased and generated by the distribution cooperative to meet the renewable portfolio standard, an explanation of steps taken to minimize those costs, including competitive procurement and comparison of the price of electricity from renewable energy resources in the bids received by the distribution cooperative to recent prices for such electricity elsewhere in the southwestern United States, and an annual compliance plan for meeting the renewable portfolio standard for the following three years.

C. If, in any given year, a distribution cooperative determines that the average annual levelized cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than sixty dollars (\$60.00) per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation after 2020, the distribution cooperative shall not be required to incur that excess cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay compliance with the renewable portfolio standard in subsequent years. The provisions of this subsection do not preclude a distribution cooperative from accepting a project with a cost that would exceed sixty dollars (\$60.00) per megawatt-hour.

D. A distribution cooperative shall report to its membership a summary of its purchases and generation of renewable energy during the preceding calendar year.

E. A distribution cooperative organized pursuant to the Rural Electric Cooperative Act shall meet the requirements and targets of the renewable portfolio standard pursuant to Subsection A of this section as demonstrated by the cooperative's retirement of renewable energy certificates associated with energy assigned to the cooperative; provided that a generation and transmission cooperative referred to in Section 62-6-4 NMSA 1978 shall be responsible for meeting the requirements and targets for all energy supplied to the distribution cooperatives in New Mexico. Energy from renewable energy and zero carbon resources that a generation and transmission cooperative supplies in compliance with the requirements and targets shall be verified at the point where the generation and transmission cooperative produces or takes delivery of the energy on behalf of the distribution cooperatives that the generation and transmission cooperative is serving.

History: Laws 2007, ch. 4, § 1; 2014, ch. 24, § 1; 2014, ch. 25, § 1; 2019, ch. 65, § 26.

Cross references. — For the public regulation commission, see 8-8-3 NMSA 1978.

The 2019 amendment, effective June 14, 2019, established new targets and requirements regarding New Mexico's renewable energy standard applicable to rural electric cooperatives, removed the requirement that renewable resources be diversified, required that renewable energy comprise forty percent of each cooperative's load by the year 2025, fifty percent by the year 2030, and a target of achieving the zero carbon resource standard by the year 2050, changed a general renewable energy exemption based on cost to a more specific \$60/MWh at the generator average cost limit, required rural electric cooperatives to meet the renewable portfolio standard requirements, and provided for verification of energy from renewable and zero carbon resources; in Subsection A, added "Except as provided in Subsection E of this section", after "electric energy supply portfolio", added "as demonstrated by its retirement of renewable energy certificates", after

"Requirements", added "and targets", and after "renewable portfolio standard are", added "as follows", and in Paragraph A(3), deleted language requiring the renewable portfolio standard of each distribution cooperative be diversified, and completely rewrote the paragraph; deleted former Subsection B, which provided an exemption based on the cost of renewable energy, and redesignated former Subsection C as Subsection B; in Subsection B, after "renewable portfolio standard", added the remainder of the subsection; and added new Subsections C and E.

The 2014 amendment, effective March 6, 2014, changed the reporting date on purchases and generation of renewable energy for distribution cooperatives; in Subsection A, in Paragraph (3), after "availability", deleted "and"; and in Subsection C, in the first sentence, after "By", changed "March 1" to "April 30".

Laws 2014, ch. 24, § 1 and Laws 2014, ch. 25, § 1, both effective March 6, 2014, enacted identical amendments to this section. The section was set out as amended by Laws 2014, ch. 25, § 1. See 12-1-8 NMSA 1978.

62-15-35. Renewable energy certificates; commission duties.

The public regulation commission shall establish:

A. a system of renewable energy certificates that can be used by a distribution cooperative to establish compliance with the renewable portfolio standard and that may include certificates that are monitored, accounted for or transferred by or through a regional system or trading program for any region in which a rural electric cooperative is located. The kilowatt-hour value of renewable energy certificates may be varied by renewable energy resource or technology; provided that:

(1) each renewable energy certificate shall have a minimum value of one kilowatt-hour for purposes of compliance with the renewable portfolio standard;

(2) three thousand four hundred twelve British thermal units of useful thermal energy is equivalent to one kilowatt hour for purposes of compliance with the renewable portfolio standard; and

(3) the following equation shall be used to calculate the annual renewable energy certificate value for a geothermal heat pump system: $(\text{coefficient of performance of heat pump unit} - 1) \times (\text{ton rating of heat pump unit} / .9) = \text{number of megawatt-hours of renewable energy certificates}$; and

B. requirements and procedures concerning renewable energy certificates that include the provisions that:

(1) renewable energy certificates:

(a) are owned by the generator of the renewable energy unless: 1) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator; 2) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the distribution cooperative purchaser of the renewable energy unless retained by the generator through specific agreement with the distribution cooperative purchaser of the energy; 3) a contract for the purchase of renewable energy is in effect prior to January 1, 2004, in which case the renewable energy certificates are owned by the purchaser of the energy for the term of such contract; or 4) the generator is a community solar facility, excluding a native community solar project, as those terms are defined in the Community Solar Act [62-16B-1 to 62-16B-8 NMSA 1978], in which case the renewable energy certificates are owned by the distribution cooperative to whose electric distribution system the community solar facility is interconnected;

(b) may be traded, sold or otherwise transferred by their owner to any other party; provided that the transfers and use of the certificate by a distribution cooperative for compliance with the renewable energy portfolio standard shall require the electric or useful thermal energy represented by the certificate to be contracted for delivery or consumed, or generated by an end-use customer of the distribution cooperative in New Mexico unless the commission determines that the distribution cooperative is participating in a national or regional market for exchanging renewable energy certificates;

(c) that are used for the purpose of meeting the renewable portfolio standard shall be registered, beginning January 1, 2008, with a renewable energy generation information system that is designed to create and track ownership of renewable energy certificates and that, through the use of independently audited generation data, verifies the generation and delivery of electricity or useful thermal energy associated with each renewable energy certificate and protects against multiple counting of the same renewable energy certificate;

(d) that are used once by a distribution cooperative to satisfy the renewable portfolio standard and are retired or that are traded, sold or otherwise transferred by the distribution cooperative shall not be further used by the distribution cooperative; and

(e) that are not used by a distribution cooperative to satisfy the renewable portfolio standard or that are not traded, sold or otherwise transferred by the distribution cooperative may be carried forward for up to four years from the date of issuance and, if not used by that time, shall be retired by the distribution cooperative; and

(2) a distribution cooperative shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party.

History: Laws 2007, ch. 4, § 2; 2015, ch. 64, § 1; 2015, ch. 71, § 1; 2021, ch. 34, § 9.

Cross references. — For the public regulation commission, see 8-8-3 NMSA 1978.

For the federal Public Utility Regulatory Policies Act of 1978, see 16 U.S.C. §§ 2601 to 2645.

The 2021 amendment, effective June 18, 2021, provided that renewable energy certificates are owned by the distribution cooperative to whose electric distribution system the community solar facility is interconnected when the generator of renewable energy is a community solar facility and provided an exception for native community solar projects; and in Subsection B, added Item B(1)(a)4.

The 2015 amendment, effective July 1, 2015, allowed renewable energy certificates to be issued for the use of

thermal energy produced by geothermal energy sources and set standards for measurement of thermal energy and geothermal heat pumps; in Subsection A, after "provided that", designated the remainder of the subsection as Paragraph (1) of Subsection A; added Paragraphs (2) and (3) of Subsection A; in Paragraph (1)(b) of Subsection B, after "require the electric", added "or useful thermal"; and in Paragraph (1)(c) of Subsection B, after "delivery of electricity", added "or useful thermal energy".

Laws 2015, ch. 64, § 1 and Laws 2015, ch. 71, § 1, both effective July 1, 2015, enacted identical amendments to this section. The section was set out as amended by Laws 2015, ch. 71, § 1. See 12-1-8 NMSA 1978.

62-15-36. Renewable energy and conservation fee.

A. A distribution cooperative may collect from its customers a renewable energy and conservation fee of no more than one percent of the customer's bill. In no event shall a distribution cooperative collect more than seventy-five thousand dollars (\$75,000) annually through the renewable energy and conservation fee from any single customer. Money collected through the renewable energy and conservation fee shall be segregated in a separate renewable energy and conservation account from other distribution cooperative funds and shall be expended only on programs or projects to promote the use of renewable energy, load management or energy efficiency. A distribution cooperative that collects a renewable energy and conservation fee from its customers shall report to the public regulation commission by March 1 of the following year the following information:

(1) the amount of money collected through the renewable energy and conservation fee in the previous calendar year;

(2) the programs or projects on which the funds collected were expended; and

(3) the determination of the distribution cooperative as to whether and in what amount to assess a renewable energy and conservation fee in the next calendar year.

B. Each distribution cooperative that collects a renewable energy and conservation fee from its customers shall deduct from the fees paid to the state pursuant to Section 62-8-8 NMSA 1978 an amount equal to fifty percent of the amount of money collected through the renewable energy and conservation fee during the preceding calendar year. The money shall be included in the account with other money from the renewable energy and conservation fee and expended only on programs or projects to promote the use of renewable energy, load management or energy efficiency.

History: Laws 2007, ch. 4, § 3.

Effective date. — Laws 2007, ch. 4, § 15 made Laws 2007, ch. 4, § 3 effective July 1, 2007.

62-15-37. Definitions; energy efficiency; renewable energy.

As used in the Rural Electric Cooperative Act:

A. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity without reducing the amount or quality of energy services;

B. "renewable energy" means electric energy generated by use of renewable energy resources and delivered to a rural electric cooperative;

C. "renewable energy certificate" means a certificate or other record, in a format approved by the public regulation commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy;

D. "renewable energy resource" means electric or useful thermal energy:

(1) generated by use of the following energy resources, with or without energy storage and delivered to a rural electric cooperative:

(a) solar, wind and geothermal;

(b) hydropower facilities brought in service on or after July 1, 2007;

- (c) other hydropower facilities supplying no greater than the amount of energy from hydropower facilities that were part of an energy supply portfolio prior to July 1, 2007;
- (d) fuel cells that do not use fossil fuels to create electricity;
- (e) biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the energy, minerals and natural resources department to: 1) be of appropriate scale to have sustainable feedstock in the near vicinity; 2) have zero life cycle carbon emissions; and 3) meet scientifically determined restoration, sustainability and soil nutrient principles; and
- (f) landfill gas and anaerobically digested waste biomass; and
- (2) does not include electric energy generated by use of fossil fuel or nuclear energy;
- E. "useful thermal energy" means renewable energy delivered from a source that can be metered and that is delivered in the state to an end user in the form of direct heat, steam or hot water or other thermal form that is used for heating, cooling, humidity control, process use or other valid end-use energy requirements and for which fossil fuel or electricity would otherwise be consumed;
- F. "zero carbon resource" means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production; and
- G. "zero carbon resource standard" means providing New Mexico rural electric cooperative retail customers with electricity generated from one hundred percent zero carbon resources.

History: Laws 2007, ch. 4, § 4; 2015, ch. 64, § 2; 2015, ch. 71, § 2; 2019, ch. 65, § 27.

The 2019 amendment, effective June 14, 2019, defined "renewable energy", "renewable energy certificate", "zero carbon resource" and "zero carbon resource standard", and revised the definition of "renewable energy resource" as used in the Rural Electric Cooperative Act; added new Subsections B and C and redesignated former Subsection B as Subsection D; in Subsection D, after "renewable energy", added "resource", in Paragraph D(1), after "generated by use of", deleted "low- or zero-emissions generation technology with substantial long-term production potential; and", redesignated former Paragraph B(3) as Paragraph D(2); in Paragraph D(1) deleted "generated by use of renewable" and added "the following", after "energy resources", deleted "that may include" and added "with or without energy storage and delivered to a rural electric cooperative", in Subparagraph D(1)(a), after "geothermal", deleted "resources", in Subparagraph D(1)(b), after "service", added "on or", and added new Subparagraph D(1)(c) and redesignated former Subparagraphs B(2)(c) and B(2)

(d) as Subparagraphs D(1)(d) and D(1)(e), respectively; in Subparagraph D(1)(d), after "fuel cells that", deleted "are" and added "do", after "not", added "use", and after "fossil", deleted "fueled" and added "fuels to create electricity", in Subparagraph D(1)(e), after "biomass resources", deleted "such as" and added "limited to", after "diameter timber", added "not to exceed eight inches", and after "New Mexico", added the remainder of the subparagraph, and in Subparagraph D(1)(f), deleted "but" and added "and"; and added Subsections F and G.

The 2015 amendment, effective July 1, 2015, added "useful thermal energy" to the definitions of the Rural Electric Cooperative Act; in Subsection A, after "energy services", deleted "and"; in Subsection B, after "electric", added "or useful thermal"; in Paragraph (3) of Subsection B, after "nuclear energy", added "and"; and added Subsection C.

Laws 2015, ch. 64, § 2 and Laws 2015, ch. 71, § 2, both effective July 1, 2015, enacted identical amendments to this section. The section was set out as amended by Laws 2015, ch. 71, § 2. See 12-1-8 NMSA 1978.

ARTICLE 16

Renewable Energy Act

Sec.		Sec.	
62-16-1.	Short title.	62-16-7.	Commission; powers and duties; voluntary programs.
62-16-2.	Findings and purposes.	62-16-8.	Rural electric cooperative; voluntary tariffs.
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62-16-4.	Renewable portfolio standard.	62-16-10.	Federal requirements.
62-16-5.	Renewable energy certificates; commission duties.		
62-16-6.	Cost recovery for renewable energy and emissions reduction.		

62-16-1. Short title.

Chapter 62, Article 16 NMSA 1978 may be cited as the "Renewable Energy Act".

History: Laws 2004, ch. 65, § 1; 2007, ch. 4, § 5.

The 2007 amendment, effective July 1, 2007, changed the reference from "this act" to Chapter 62, Article 16 NMSA 1978.

62-16-2. Findings and purposes.

A. The legislature finds that:

- (1) the generation of electricity through the use of renewable energy presents opportunities to promote energy self-sufficiency, preserve the state's natural resources and pursue an improved environment in New Mexico;
- (2) the use of renewable energy by public utilities subject to commission oversight in accordance with the Renewable Energy Act can bring significant economic benefits to New Mexico;
- (3) public utilities should be required to include prescribed amounts of renewable energy in their electric energy supply portfolios for sales to retail customers in New Mexico by prescribed dates;
- (4) public utilities should be able to recover their reasonable costs incurred to procure or generate energy from renewable energy resources used to meet the requirements of the Renewable Energy Act;
- (5) a public utility should have incentives to go beyond the minimum requirements of the renewable portfolio standard;
- (6) public utilities should not be required to acquire energy generated from renewable energy resources that could result in costs above a reasonable cost threshold; and
- (7) it may serve the public interest for public utilities to participate in national or regional renewable energy trading.

B. The purposes of the Renewable Energy Act are to:

- (1) prescribe the amounts of renewable energy resources that public utilities shall include in their electric energy supply portfolios for sales to retail customers in New Mexico by prescribed dates;
- (2) allow public utilities to recover costs through the rate-making process incurred for procuring or generating renewable energy used to comply with the prescribed amount; and
- (3) protect public utilities and their ratepayers from renewable energy costs that are above a reasonable cost threshold.

History: Laws 2004, ch. 65, § 2; 2007, ch. 4, § 6.

The 2007 amendment, effective July 1, 2007, added Paragraphs (5) and (7) of Subsection A.

62-16-3. Definitions.

As used in the Renewable Energy Act:

- A. "commission" means the public regulation commission;
- B. "energy storage" means batteries or other means by which energy can be retained and delivered as electricity for use at a later time;
- C. "municipality" means a municipal corporation, organized under the laws of the state, and H class counties;
- D. "public utility" means an entity certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978] but does not include rural electric cooperatives;
- E. "reasonable cost threshold" means an average annual levelized cost of sixty dollars (\$60.00) per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation after 2020;
- F. "renewable energy" means electric energy generated by use of renewable energy resources and delivered to a public utility;
- G. "renewable energy certificate" means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy;
- H. "renewable energy resource" means the following energy resources, with or without energy storage:

(1) solar, wind and geothermal;

(2) hydropower facilities brought in service on or after July 1, 2007;

(3) biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the energy, minerals and natural resources department to:

- (a) be of appropriate scale to have sustainable feedstock in the near vicinity;
- (b) have zero life cycle carbon emissions; and
- (c) meet scientifically determined restoration, sustainability and soil nutrient principles;

(4) fuel cells that do not use fossil fuels to create electricity; and

(5) landfill gas and anaerobically digested waste biogas;

I. "renewable portfolio standard" means the minimum percentage of retail sales of electricity by a public utility to electric consumers in New Mexico that is required by the Renewable Energy Act to be from renewable energy;

J. "renewable purchased power agreement" means an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price and binds the purchaser to that price;

K. "zero carbon resource" means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production; and

L. "zero carbon resource standard" means providing New Mexico public utility customers with electricity generated from one hundred percent zero carbon resources.

History: Laws 2004, ch. 65, § 3; 2007, ch. 4, § 7; 2019, ch. 65, § 28.

The 2019 amendment, effective June 14, 2019, defined "energy storage", "renewable energy resource", "zero carbon resource" and "zero carbon resource standard", and revised the definitions of certain terms as used in the Renewable Energy Act; added a new Subsection B and redesignated former Subsections B through F as Subsections C through G, respectively; in Subsection E, after "cost threshold means", deleted "the cost established by the commission, above which a public utility shall not be required to add renewable energy to its electric energy supply portfolio pursuant to the renewable portfolio standard" and added the remainder of the subsection; in Subsection F, after "renewable energy" means electric energy", deleted Subparagraphs F(1) through F(3) and added "and delivered to a public utility"; in Subsection G, after "attributes from one", deleted "kilowatt-hour" and added "megawatt-hour", after "electricity", deleted

"generation" and added "generated", and after "renewable energy", deleted "resource"; added new Subsection H and redesignated former Subsections G and H as Subsections I and J; in Subsection I, after "renewable portfolio standard" means the", added "minimum", after "retail sales", added "of electricity", and after "Renewable Energy Act to be", deleted "supplied by" and added "from"; in Subsection J, after "price and binds", deleted "a public utility to purchase the power at" and added "the purchaser to"; and added Subsections K and L.

The 2007 amendment, effective July 1, 2007, added Subsection B to define "municipality"; changed former Subsections B through D to Subsections C through E; added Subparagraph (b) of Paragraph (2) of Subsection E to include hydropower facilities brought in service after July 1, 2007; added Subsection F to define "renewable energy certificate"; changed former Subsection E to Subsection G; and added Subsection H to define "renewable purchased power agreement".

62-16-4. Renewable portfolio standard.

A. A public utility shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply portfolio as demonstrated by its retirement of renewable energy certificates; provided that the associated renewable energy is delivered to the public utility and assigned to the public utility's New Mexico customers. For public utilities other than rural electric cooperatives and municipalities, requirements of the renewable portfolio standard are:

- (1) no later than January 1, 2015, renewable energy shall comprise no less than fifteen percent of each public utility's total retail sales to New Mexico customers;
- (2) no later than January 1, 2020, renewable energy shall comprise no less than twenty percent of each public utility's total retail sales to New Mexico customers;
- (3) no later than January 1, 2025, renewable energy shall comprise no less than forty percent of each public utility's total retail sales of electricity to New Mexico customers;

(4) no later than January 1, 2030, renewable energy shall comprise no less than fifty percent of each public utility's total retail sales of electricity to New Mexico customers;

(5) no later than January 1, 2040, renewable energy resources shall supply no less than eighty percent of all retail sales of electricity in New Mexico; provided that compliance with this standard until December 31, 2047 shall not require the public utility to displace zero carbon resources in the utility's generation portfolio on the effective date of this 2019 act; and

(6) no later than January 1, 2045, zero carbon resources shall supply one hundred percent of all retail sales of electricity in New Mexico. Reasonable and consistent progress shall be made over time toward this requirement.

B. In administering the standards required by Paragraphs (5) and (6) of Subsection A of this section, the commission shall:

(1) not jeopardize the operation of a sewage treatment facility that captures and combusts methane gas in the facility's operations;

(2) maintain and protect the safety, reliable operation and balancing of loads and resources on the electric system;

(3) prevent unreasonable impacts to customer electricity bills, taking into consideration the economic and environmental costs and benefits of renewable energy resources and zero carbon resources;

(4) prevent carbon dioxide emitting electricity-generating resources from being re-assigned, redesignated or sold as a means of complying with the standard;

(5) in consultation with the energy, minerals and natural resources department, undertake programs not prohibited by law to achieve the standard;

(6) in consultation with the department of environment, ensure that the standard does not result in material increases to greenhouse gas emissions from entities not subject to commission oversight and regulation; and

(7) in consultation with electricity transmission system operators responsible for balancing New Mexico electricity loads and resources, issue a report to the legislature by July 1, 2020, and each July 1 every four years thereafter. The report shall include:

(a) review of the standard, with a focus on technologies, forecasts, existing transmission, environmental protection, public safety, affordability and electricity transmission and distribution system reliability;

(b) evaluation of the anticipated financial costs and benefits to electric utilities in implementing the standard, including the impacts and benefits to customer electricity bills; and

(c) identification of the barriers to, and benefits of, achieving the standard.

C. Any customer that is a political subdivision of the state, or any educational institution designated in Article 12, Section 11 of the constitution of New Mexico with an enrollment of twenty thousand students or more during the fall semester on its main campus, with consumption exceeding twenty thousand megawatt-hours per year at any single location or facility and that owns facilities that produce renewable energy or hosts such facilities through a renewable purchased power agreement, shall not be charged by the utility for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. The customer shall annually certify to the state auditor and notify the commission and the customer's serving electric utility of the amount of renewable energy produced at the customer-owned or customer-hosted facilities that generate renewable energy. The customer shall also certify to the state auditor and notify the commission that the customer will retire all renewable energy certificates associated with the renewable energy produced by those facilities. Any financial benefits as a result of the provisions of this subsection shall accrue to the customer immediately upon the effective date of this 2019 act and shall be reflected in customer bills each month, subject to annual true-up and reconciliation. The provisions of this subsection shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs.

D. Upon a motion or application by a public utility the commission shall, or upon a motion or application by any other person the commission may, open a docket to develop and provide financial or other incentives to encourage public utilities to produce or acquire renewable energy that exceeds the applicable annual renewable portfolio standard set forth in this section; results in reductions in carbon dioxide emissions earlier than required by Subsection A of this section; or causes a reduction

in the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico. The incentives may include additional earnings and capital investment opportunities for resources used in furtherance of the outcomes described in this subsection.

E. If, in any given year, a public utility determines that the average annual levelized cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than the reasonable cost threshold, the public utility shall not be required to incur that excess cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay compliance with the renewable portfolio standard in subsequent years. The provisions of this subsection do not preclude a public utility from accepting a project with a cost that would exceed the reasonable cost threshold. When a public utility can generate or procure renewable energy at or below the reasonable cost threshold, it shall be required to do so to the extent necessary to meet the applicable renewable portfolio standard and shall not be precluded from exceeding the standard.

F. By September 1, 2007 and until June 30, 2019, a public utility shall file a report to the commission on its procurement and generation of renewable energy during the prior calendar year and a procurement plan that includes:

- (1) the cost of procurement for any new renewable energy resource in the next calendar year required to comply with the renewable portfolio standard; and
- (2) testimony and exhibits that demonstrate that the proposed procurement is reasonable as to its terms and conditions considering price, availability, reliability, any renewable energy certificate values and diversity of the renewable energy resource; or
- (3) demonstration that the plan is otherwise in the public interest.

G. By July 1, 2020, and each July 1 thereafter, a public utility shall file a report to the commission on the public utility's procurement and generation of renewable energy since the last report and a procurement plan that includes:

- (1) the cost of procurement for new renewable energy required to comply with the renewable portfolio standard;
- (2) the capital, operating and fuel costs on a per-megawatt-hour basis during the preceding calendar year of each nonrenewable generation resource rate-based by the utility, or dedicated to the utility through a power purchase agreement of one year or longer, and the nonrenewable generation resources' carbon dioxide emissions on a per-megawatt-hour basis during that same year;
- (3) information, including exhibits, as applicable, that demonstrates that the proposed procurement:
 - (a) was the result of competitive procurement that included opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options;
 - (b) has a cost that is reasonable as evidenced by a comparison of the price of electricity from renewable energy resources in the bids received by the public utility to recent prices for comparable energy resources elsewhere in the southwestern United States; and
 - (c) is in the public interest, considering factors such as overall cost and economic development opportunities; and
- (4) strategies used to minimize costs of renewable energy integration, including location, diversity, balancing area activity, demand-side management and load management.

H. The commission shall approve or modify a public utility's procurement plan within ninety days and may approve the plan without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary. The commission may modify a plan after notice and hearing. The commission may, for good cause, extend the time to approve a procurement plan for an additional ninety days. If the commission does not act within the ninety-day period, the procurement plan is deemed approved.

I. The commission may reject a procurement plan if, within forty days of filing, the commission finds that the plan does not contain the required information and, upon the rejection, shall provide the public utility the time necessary to file a revised plan; provided that the total amount of renewable energy required to be procured by the public utility shall not change.

History: Laws 2004, ch. 65, § 4; 2007, ch. 4, § 8; 2011, ch. 93, § 1; 2014, ch. 41, § 1; 2019, ch. 65, § 29.

The 2019 amendment, effective June 14, 2019, required that public utilities demonstrate compliance with

the renewable portfolio standard requirements by their retirement of renewable energy certificates, expanded the renewable energy standard to require forty percent renewable energy by the year 2025, fifty percent by the year 2030, eighty percent by the year 2040, and one hundred percent emission free by the year 2045, provided additional duties for the public regulation commission in administering new standards, expanded the application of certain provisions to educational institutions with an enrollment of twenty thousand students or more, expanded a directive to the public regulation commission to provide incentives to public utilities to exceed the law's renewable requirements, and provided additional reporting requirements for public utilities; in Subsection A, added "as demonstrated by its retirement of renewable energy certificates; provided that the associated renewable energy is delivered to the public utility and assigned to the public utility's New Mexico customers. For public utilities other than rural electric cooperatives and municipalities", deleted Paragraph A(1) and Subparagraphs A(1)(a) and A(1)(b) and redesignated former Subparagraphs A(1)(c) and A(1)(d) as Paragraphs A(1) and A(2), respectively, deleted former Paragraph A(2) and added new Paragraphs A(3) through A(6); added a new Subsection B and redesignated former Paragraph A(3) as Subsection C, Paragraph A(5) as Subsection D, and former Subsection B as Subsection E, respectively; in Subsection C, after "with an enrollment of", deleted "twenty-four" and added "twenty", after "consumption exceeding twenty", deleted the remaining language of former Paragraph A(3), deleted Paragraph A(4) and added the remainder of the subsection; in Subsection D, after "Upon a", deleted "commission", after "shall", added "or upon a motion or application by any other person the commission may", after "docket to", added "develop and", after "provide", deleted "appropriate performance-based", after "public utilities to", added "produce or", and deleted "The commission shall initiate rules by June 1, 2008 to implement this subsection; and", deleted former Paragraph A(6) and added the remainder of the subsection; in Subsection E, after "determines that the", added "average annual levelized", after "shall not operate to delay", deleted "the annual increases in" and added "compliance with", added "The provisions of this subsection do not preclude a public utility from accepting a project with a cost that would exceed the reasonable cost threshold.", after "required to", deleted "add renewable energy resources" and added "do so to the extent necessary", and after "applicable renewable portfolio standard", deleted "applicable in the year when the renewable energy resources are being added"; deleted former Subsection C and redesignated former Subsection D as Subsection F; in Subsection F, deleted "and July 1 of each year thereafter until 2022, and thereafter as determined necessary by the commission" and added "and until June 30, 2019", in Paragraph F(2), after "availability", deleted "dispatchability" and added "reliability"; added a new Subsection G and redesignated former Subsections E and F as Subsections H and I, respectively; in Subsection H, after "modify a public utility's", deleted "procurement or transitional"; in Subsection I, after "may reject a", deleted "procurement or transitional", after "procurement plan if", added

"within forty days of filing, the commission", after "upon the rejection", deleted "may suspend the public utility's obligation to procure additional resources for" and added "shall provide the public utility", and after "total amount of renewable energy", added "required"; and deleted former Subsections G and H.

The 2014 amendment, effective May 21, 2014, exempted certain state educational institutions from charges for renewable energy procurements; and in Subsection A, in Paragraph (3), after "political subdivision of the state", added "or any educational institution designated in Article 12, Section 11 of the constitution of New Mexico, with an enrollment of twenty-four thousand students or more during the fall semester on its campus".

The 2011 amendment, effective June 17, 2011, added Paragraph (3) of Subsection A to exempt certain political subdivisions from all charges by public utilities for renewable energy procurements if the political subdivision certifies that it will expend two and one-half percent of annual electricity charges to develop renewable energy generation.

The 2007 amendment, effective July 1, 2007, added Paragraph (1) of Subsection A, which added requirements for public utilities other than rural electric cooperatives and municipalities; deleted former Paragraph (2) of Subsection A, which provided that the renewable portfolio standard shall increase by one percent per year until January 1, 2011 when the renewal portfolio standard will remain fixed at ten percent per year; added Subparagraphs (b) through (d) of Paragraph (1) of Subsection A; added Paragraph (4) of Subsection A; in Subsection D, changed the date from September 1 of each year until 2012 to September 1, 2007 and July 1 of each year thereafter until 2022; changed the content of the report from purchases to procurement and generation; in Subsection E, changed all time periods from sixty days to ninety days; and added Subsection H.

ANNOTATIONS

Recovery of large customer cap costs. — The public regulation commission has discretion to determine whether renewable energy procurement reductions are necessary when large customer cap costs arise, and this section does not bar the allocation of large customer cap costs to customers who are not subject to a legislatively imposed limit on their renewable energy costs. *N.M. Att'y. Gen. v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-032.

Where the public regulation commission (PRC) approved utility's renewable energy cost rider which sought to recover \$22 million of renewable energy procurement costs from customers who are not subject to a legislatively imposed limit on their renewable energy costs (non-capped customers), the PRC properly allocated large customer cap costs to non-capped customers to enable the utility to recover its reasonable renewable energy procurement costs; such a recovery mechanism is the only viable method of cost recovery that is consistent with the purposes of the Renewable Energy Act, 62-16-1 through 62-16-10 NMSA 1978. *N.M. Att'y. Gen. v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-032.

62-16-5. Renewable energy certificates; commission duties.

A. The commission shall establish:

(1) a system of renewable energy certificates that can be used by a public utility to establish compliance with the renewable portfolio standard and that may include certificates that are monitored, accounted for or transferred by or through a regional system or trading program for any region in which a public utility is located; and

(2) requirements and procedures concerning requirements for renewable energy certificates pursuant to Subsections B and C of this section.

B. Renewable energy certificates:

(1) are owned by the generator of the renewable energy unless:

(a) the renewable energy certificates are transferred to the purchaser of the electricity through specific agreement with the generator;

(b) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy;

(c) a contract for the purchase of renewable energy is in effect prior to July 1, 2019, in which case the renewable energy certificates are owned by the purchaser of the electricity for the term of such contract, unless otherwise agreed to in a contract approved by the commission; or

(d) the generator is a community solar facility, excluding a native community solar project, as those terms are defined in the Community Solar Act [62-16B-1 to 62-16B-8 NMSA 1978], in which case the renewable energy certificates are owned by the public utility to whose electric distribution system the community solar facility is interconnected;

(2) may be traded, sold or otherwise transferred by their owner, unless the certificates are from a rate-based public utility plant, in which case the entirety of the renewable energy certificates from that plant shall be retired by the utility on behalf of itself or its customers. Any contract to purchase renewable energy entered into by a public utility on or after July 1, 2019 shall include conveyance to the purchasing utility of all renewable energy certificates, and the entirety of those certificates shall be retired by that utility on behalf of itself or its customers or subsequently transferred to a retail customer for retirement under a voluntary program for purchasing renewable energy approved by the commission. A utility shall not claim that it is providing renewable energy from generation resources for which it has traded, sold or transferred the associated renewable energy certificates. The commission shall not disallow the recovery of the cost associated with any expired renewable energy certificate. The public utility shall annually file a report with the commission discussing:

(a) its use, sale, trading or transfer of renewable energy certificates; and

(b) whether and how its public claims of renewable energy generation account for renewable energy certificates that it has traded, sold or transferred;

(3) that are used for the purpose of meeting the renewable portfolio standard shall be registered with a renewable energy generation information system that is designed to create and track ownership of renewable energy certificates and that, through the use of independently audited generation data, verifies the generation and delivery of electricity associated with each renewable energy certificate and protects against multiple counting of the same renewable energy certificate; and

(4) may be carried forward for up to four years from the date of issuance to establish compliance with the renewable portfolio standard, after which they shall be deemed retired by the public utility.

C. A public utility shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources.

History: Laws 2004, ch. 65, § 5; 2007, ch. 4, § 9; 2019, ch. 65, § 30; 2021, ch. 34, § 10.

Cross references. — For the Federal Public Utility Regulatory Policies Act of 1978, see 16 U.S.C. §§ 2601 to 2645.

The 2021 amendment, effective June 18, 2021, provided that renewable energy certificates are owned by the public utility to whose electric distribution system the community solar facility is interconnected when the generator of renewable energy is a community solar facility and provided an exception for native community solar projects; and in Subsection B, added Subparagraph B(1)(d).

The 2019 amendment, effective June 14, 2019, prohibited the trading, selling, or transferring of renewable energy certificates from rate-based public utility plants, and

provided additional duties and responsibilities for public utilities regarding the sale or transfer of renewable energy certificates; added new subsection designation "A" and redesignated former Subsections A and B as Paragraphs A(1) and A(2), respectively; in Subsection A, Paragraph A(1), after "in which a public utility is located", deleted the remainder of the paragraph, which related to the kilowatt-hour value of renewable energy certificates, and in Paragraph A(2), after "renewable energy certificates", deleted "that include the provisions that" and added "pursuant to Subsections B and C of this section"; redesignated former Paragraph B(1) as Subsection B, former Subparagraph B(1)(a) as Paragraph B(1), former Subparagraph B(1)(a)1 as Subparagraph B(1)(a), former Subparagraph B(1)(a)2 as Subparagraph B(1)(a), former Subparagraph B(1)(a)3 as Subparagraph B(1)(a)3, and former Subparagraph B(1)(a)4 as Subparagraph B(1)(a)4.

(c), former Subparagraph B(1)(b) as Paragraph B(2), former Subparagraph B(1)(c) as Paragraph B(3), and former Paragraph B(2) as Subsection C; in Subsection B, Subparagraph B(1)(b), after "transferred to the purchase of the", deleted "energy" and added "electricity", in Subparagraph B(1)(b), after "purchaser of the renewable energy", deleted "unless retained by the generator through specific agreement with the public utility purchaser of the energy", in Subparagraph B(1)(c), changed "January 1, 2004" to "July 1, 2019", and after "such contract", added "unless otherwise agreed to in a contract approved by the commission", in Paragraph B(2), after "transferred by their owner", deleted language related to the transfer of renewable energy certificates and added the remainder of the paragraph, in Paragraph B(3),

after "shall be registered", deleted "beginning January 1, 2009", deleted former Subparagraphs B(1)(d) and B(1)(e) and added paragraph designation "(4)", in Paragraph B(4), after "date of issuance", deleted "and, if not used by that time" and added "to establish compliance with the renewable portfolio standard, after which they"; and in Subsection C, after "eligible renewable energy resources", deleted "and has not been retired, traded, sold or otherwise transferred to another party".

The 2007 amendment, effective July 1, 2007, added the provision in Subparagraph (b) of Paragraph (1) of Subsection B that the electric energy be consumed or generated by an end-use customer of the public utility; and added Subparagraph (c) of Paragraph (1) of Subsection B.

62-16-6. Cost recovery for renewable energy and emissions reduction.

A. A public utility that procures or generates renewable energy shall recover, through the rate-making process, the reasonable costs of complying with the renewable portfolio standard. Costs that are consistent with commission approval of procurement plans or transitional procurement plans shall be deemed to be reasonable.

B. The commission shall not exclude from such cost recovery reasonable interconnection and transmission costs and costs to comply with electric industry reliability standards incurred by the public utility in order to deliver renewable energy to retail New Mexico customers.

C. If a public utility has been granted a certificate of public convenience and necessity prior to January 1, 2015 to construct or operate an electric generation facility and the investment in that facility has been allowed recovery as part of the utility's rate-base, the commission may require the facility to discontinue serving customers within New Mexico if the replacement has less or zero carbon dioxide emissions into the atmosphere; provided that no order of the commission shall disallow recovery of any undepreciated investments or decommissioning costs associated with the facility.

History: Laws 2004, ch. 65, § 6; 2007, ch. 4, § 10; 2019, ch. 65, § 31.

The 2019 amendment, effective June 14, 2019, prohibited the public regulation commission from excluding reasonable costs of recovery and costs to comply with electric industry reliability standards that are incurred to deliver renewable energy, and authorized the public regulation commission to require certain electric generation facilities to discontinue serving customers in the state if a replacement has less or zero carbon dioxide emissions into the atmosphere; in the section heading, added "and emissions reduction"; in Subsection B, after "transmission costs", added "and costs to comply with electric industry reliability standards"; and completely rewrote Subsection C.

The 2007 amendment, effective July 1, 2007, added Subsection C.

ANNOTATIONS

Rate making process. — The rate-making process includes both general rate cases and automatic adjustment clause recovery, depending upon the type of cost

involved. *N.M. Indus. Energy Consumers v. N.M. PRC*, 2007-NMSC-053, 142 N.M. 533, 168 P.3d 105.

Cost of investor-supplied prepaid pension asset may be included in utility's rate base. — A utility can include prepayments for pension expenses in its rate base because the utility is out-of-pocket for such costs until they are recovered from ratepayers and is therefore entitled to recover its costs of financing such prepaid expenses; only investor-supplied working capital may be included in the rate base. *N.M. Att'y. Gen. v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-032.

Where utility's investors made contributions to its pension fund which generated earnings that effectively reduced the utility's pension expense, and the investors, not the ratepayers, absorbed the cost of funding the pension program, the prepaid pension asset was properly included in the rate base because the asset amounted to working capital that benefitted the ratepayers by reducing the total pension costs needed in the utility's revenue requirement. *N.M. Att'y. Gen. v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-032.

62-16-7. Commission; powers and duties; voluntary programs.

A. The commission:

(1) shall adopt rules regarding the renewable portfolio standard, including a provision for public utility records and reports; and

(2) may require that a public utility offer its retail customers a voluntary program for purchasing renewable energy that is in addition to electricity provided by the public utility pursuant to the renewable portfolio standard, under rates and terms that are approved by the commission.

B. All renewable energy purchased by a retail customer through an approved voluntary program shall:

(1) have all associated renewable energy certificates retired by the retail customer, or on that customer's behalf, by the public utility, and the certificates shall not be used to meet the public utility's renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978;

(2) be excluded from the total retail sales to New Mexico customers used to determine the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978; and

(3) not be subject to charges by the public utility to recover costs of complying with the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978.

History: Laws 2004, ch. 65, § 7; 2019, ch. 65, § 32.

The 2019 amendment, effective June 14, 2019, removed the renewable portfolio standard exemption for all-requirements electric supply contracts, and required that all renewable energy certificates associated with voluntary renewable energy purchase programs be retired by the public utility, be excluded from the total retail sales to New Mexico customers, and not be subject to charges by

the public utility; in the section heading, deleted "additional" and added "voluntary programs"; added new subsection designation "A" and redesignated former Subsections A and B as Paragraphs A(1) and A(2), respectively; deleted former Subsection C, which related to a renewable portfolio standard exemption, and added a new Subsection B.

62-16-8. Rural electric cooperative; voluntary tariffs.

A. The commission may require that a rural electric cooperative:

(1) offer its retail customers a voluntary program for purchasing renewable energy under rates and terms that are approved by the commission;

(2) report to the commission the demand for renewable energy pursuant to a voluntary program; and

(3) comply with the requirements for the procurement of renewable energy set forth in the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978].

B. The commission shall establish and amend rules and regulations for the implementation of renewable portfolio standards consistent with the Rural Electric Cooperative Act.

History: Laws 2004, ch. 65, § 8; 2007, ch. 4, § 11; 2019, ch. 65, § 33.

The 2019 amendment, effective June 14, 2019, in Paragraph A(1), after "approved by the commission", deleted "but only to the extent that the cooperative's

suppliers make renewable energy available under wholesale power contracts".

The 2007 amendment, effective July 1, 2007, added Paragraph (3) of Subsection A and added Subsection B.

62-16-9. Existing rules.

The commission shall promulgate rules to implement the provisions of the Renewable Energy Act.

History: Laws 2004, ch. 65, § 9; 2019, ch. 65, § 34.

The 2019 amendment, effective June 14, 2019, required the public regulation commission to promulgate rules to implement the provisions of the Renewable Energy Act; and after "shall", deleted "establish and amend"

and added "promulgate", and after "rules", deleted "and regulations for the implementation of renewable portfolio standards consistent" and added "to implement the provisions of".

62-16-10. Federal requirements.

Renewable energy procured or generated by a public utility to comply with a federal law, rule or regulation may be used to satisfy the required procurements of the Renewable Energy Act.

History: Laws 2004, ch. 65, § 10; 2019, ch. 65, § 35.

The 2019 amendment, effective June 14, 2019, allowed a public utility to use renewable energy procured or generated to comply with a federal law, rule or regulation to be used to satisfy the procurement requirements of the

Renewable Energy Act; and after "generated by a public utility to", deleted "meet" and added "comply with", and after "federal", deleted "renewable portfolio standard" and added "law, rule or regulation".

ARTICLE 16A

New Mexico Renewable Energy Transmission Authority Act

Sec.		Sec.	
62-16A-1.	Short title.	62-16A-10.	New Mexico renewable energy transmission authority act is full authority for issuance of bonds; bonds are legal investments.
62-16A-2.	Definitions.	62-16A-11.	Suit may be brought to compel performance of officers.
62-16A-3.	New Mexico renewable energy transmission authority created; organization.	62-16A-12.	Renewable energy transmission bonds tax exempt.
62-16A-4.	Authority; duties and powers.	62-16A-13.	Renewable energy transmission authority operational fund.
62-16A-5.	Renewable energy transmission bonds; appropriation of proceeds.	62-16A-14.	Report to legislature.
62-16A-6.	Renewable energy transmission bonding fund created; money in the fund pledged.	62-16A-15.	Legislative oversight.
62-16A-7.	Authority to refund bonds.	62-16A-16.	Proprietary information.
62-16A-8.	Renewable energy transmission bonds; form; execution.		
62-16A-9.	Procedure for sale of renewable energy transmission bonds.		

62-16A-1. Short title.

Chapter 62, Article 16A NMSA 1978 may be cited as the "New Mexico Renewable Energy Transmission Authority Act".

History: Laws 2007, ch. 3, § 1; 2011, ch. 33, § 1.

The 2011 amendment, effective July 1, 2011, changed the statutory reference to the act to the chapter and article in the NMSA 1978.

62-16A-2. Definitions.

As used in the New Mexico Renewable Energy Transmission Authority Act:

A. "acquire" means to obtain eligible facilities by lease, construction, reconstruction or purchase;

B. "authority" means the New Mexico renewable energy transmission authority;

C. "bonds" means renewable energy transmission bonds and includes notes, warrants, bonds, temporary bonds and anticipation notes issued by the authority;

D. "eligible facilities" means facilities to be financed or acquired by the authority, in which, within one year after beginning the transmission or storage of any electricity, and thereafter, at least thirty percent of the electric energy, as estimated by the authority, originates from renewable energy sources;

E. "facilities" means electric transmission and interconnected storage facilities and all related structures, properties and supporting infrastructure, including any interests therein;

F. "finance" or "financing" means the lending of bond proceeds by the authority to a public utility or other private person for the purpose of planning, acquiring, operating and maintaining eligible facilities in whole or in part by that public utility or other private person;

G. "project" means an undertaking by the authority to finance or plan, acquire, maintain and operate eligible facilities located in part or in whole within the state of New Mexico;

H. "public utility" means a public electric utility regulated by the public regulation commission pursuant to the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] and municipal utilities exempt from public regulation commission regulation pursuant to Section 62-6-4 NMSA 1978 that own or operate facilities;

I. "renewable energy" means electric energy:

(1) generated by use of low- or zero-emissions generation technology with substantial long-term production potential; and

(2) generated by use of renewable energy resources that may include:

(a) solar, wind, hydropower and geothermal resources;

(b) fuel cells that are not fossil fueled; or

(c) biomass resources, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass; but

(3) does not include electric energy generated by use of fossil fuel or nuclear energy; and

J. "storage" means energy storage technologies that convert, store and return electricity to help alleviate disparities between electricity supply and demand, to facilitate the dispatching of electricity or to increase economic return on the sale of electricity.

History: Laws 2007, ch. 3, § 2.

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 2 effective July 1, 2007.

62-16A-3. New Mexico renewable energy transmission authority created; organization.

A. The "New Mexico renewable energy transmission authority" is created as a public body, politic and corporate, separate and apart from the state, constituting a governmental instrumentality for the performance of essential public functions.

B. The authority shall be composed of six members as follows:

(1) three members appointed by the governor with the advice and consent of the senate. The initial appointees shall be appointed for staggered terms of one, two and three years; thereafter, the members shall be appointed for three-year terms;

(2) the state treasurer or the state treasurer's designee;

(3) one member appointed by the speaker of the house of representatives who shall serve at the pleasure of the speaker of the house; and

(4) one member appointed by the president pro tempore of the senate who shall serve at the pleasure of the president pro tempore.

C. The qualifications of the members shall be as follows:

(1) one member appointed by the governor shall have expertise in financial matters involving the financing of major electrical transmission projects;

(2) the other four appointed members shall have:

(a) special knowledge of the public utility industry, as evidenced by college degrees or by experience, at least five years of which must be with the public utility industry; and

(b) knowledge of renewable energy development; and

(3) no member shall represent a person that owns or operates facilities.

D. The members initially appointed by the speaker of the house and the president pro tempore of the senate shall, by lot, determine one to have an initial term of two years and one to have an initial term of four years; thereafter, the appointments will be for staggered terms of four years.

E. In addition to the six voting members, the secretary of energy, minerals and natural resources shall serve as an ex-officio nonvoting member of the authority.

F. The governor shall designate an appointed member of the authority to serve as chair, and the authority may elect annually such other officers as it deems necessary.

G. The authority shall meet at the call of the chair or whenever four members shall so request in writing. A majority of members then serving constitutes a quorum for the transaction of business, but the affirmative vote of at least four members is necessary for any action to be taken by the authority.

H. The authority is not created or organized, and its operations are not conducted, for the purpose of making a profit, but it is expected to recover the costs of operating the authority. No part of the revenues or assets of the authority shall benefit or be distributable to its members, officers or other private persons. The members of the authority shall receive no compensation for their services, but the public members shall be reimbursed for actual and necessary expenses at the same rate and on the same basis as provided for public officers in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

I. The authority is not subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Renewable Energy

Transmission Authority Act. No use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to in the law.

J. The authority is a governmental instrumentality for purposes of the Tort Claims Act [41-4-1 through 41-4-27 NMSA 1978].

History: Laws 2007, ch. 3, § 3; 2011, ch. 51, § 4.

The 2011 amendment, effective July 1, 2011, decreased the number of members of the board from seven

to six and removed the state investment officer as a member of the authority.

62-16A-4. Authority; duties and powers.

A. The authority shall:

(1) do any and all things necessary or proper to accomplish the purposes of the New Mexico Renewable Energy Transmission Authority Act;

(2) hire an executive director and such other employees or other agents as it deems necessary for the performance of its powers and duties, including consultants, financial advisors and legal advisors, and prescribe the powers and duties and fix the compensation of the employees and agents. The executive director of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority; and

(3) maintain such records and accounts of revenues and expenditures as required by the state auditor. The state auditor or the state auditor's designee shall conduct an annual financial and legal compliance audit of the accounts of the authority and file copies with the governor and the legislature.

B. The authority may:

(1) make and execute agreements, contracts and other instruments necessary or convenient in the exercise of its powers and functions with any person or governmental agency;

(2) enter into contractual agreements with respect to one or more projects upon the terms and conditions the authority considers advisable;

(3) utilize the services of executive departments of the state upon mutually agreeable terms and conditions;

(4) enter into partnerships with public or private entities;

(5) identify and establish corridors for the transmission of electricity within the state;

(6) through participation in appropriate regional transmission forums, coordinate, investigate, plan, prioritize and negotiate with entities within and outside the state for the establishment of interstate transmission corridors;

(7) pursuant to Subsection C of this section, finance or plan, acquire, maintain and operate eligible facilities necessary or useful for the accomplishment of the purposes of the New Mexico Renewable Energy Transmission Authority Act;

(8) pursuant to the provisions of the Eminent Domain Code [42A-1-1 through 42A-1-33 NMSA 1978], exercise the power of eminent domain for acquiring property or rights of way for public use if needed for projects if such action does not involve taking utility property or does not materially diminish electric service reliability of the transmission system in New Mexico, as determined by the public regulation commission;

(9) receive by gift, grant, donation or otherwise, any sum of money, aid or assistance from the United States, the state of New Mexico, any other state, any political subdivision or any other public or private entity;

(10) for any project, provide information and training to employees of the project regarding any unique hazards that may be posed by the project, as well as training in safety work practices and emergency procedures;

(11) issue bonds pursuant to the New Mexico Renewable Energy Transmission Authority Act as necessary to undertake a project;

(12) enter into contracts for the lease and operation by the authority of eligible facilities owned by a public utility or other private person;

(13) enter into contracts for leasing eligible facilities owned by the authority, provided that any revenue derived pursuant to the lease shall be deposited in the renewable energy transmission bonding fund;

(14) collect payments of reasonable rates, fees, interest or other charges from persons using eligible facilities to finance eligible facilities and for other services rendered by the authority, provided that any revenue derived from payments made to the authority shall be deposited in the renewable energy transmission bonding fund;

(15) borrow money necessary to carry out the purposes of the New Mexico Renewable Energy Transmission Authority Act and mortgage and pledge any leases, loans or contracts executed and delivered by the authority;

(16) sue and be sued; and

(17) adopt such reasonable administrative and procedural rules as may be necessary or appropriate to carry out its powers and duties.

C. Except as provided in this subsection, the authority shall not enter into any project if public utilities or other private persons are performing the acts, are constructing or have constructed the facilities, or are providing the services contemplated by the authority, and are willing to provide funds for and own new infrastructure to meet an identified need and market. Before entering into a project, the following procedures shall be implemented:

(1) the authority shall provide to each public utility and the public regulation commission and publish one time in a newspaper of general circulation in New Mexico and one time in a newspaper in the area where the eligible facilities are contemplated and on a publicly accessible web page maintained by the authority, an initial notice describing the project that the authority is contemplating, including a detailed description of the existing or anticipated renewable energy sources that justify the determination by the authority that the project facilities are eligible facilities. The description shall contain, at a minimum, the names of all persons that already are or will develop the renewable energy sources, all persons that will own the renewable energy sources and the peak output capacity, source type, location and anticipated connection date of the renewable energy sources;

(2) any person with an interest that may be affected by the proposed project shall have thirty days from the date of the last publication of the initial notice to challenge, in writing, the determination by the authority that the facilities are eligible facilities. If a challenge is received by the authority within the thirty days, the authority shall hold a public hearing no sooner than thirty days after receiving the challenge and after a minimum of two weeks notice in the same newspapers and web page in which the initial notice was given. Following the public hearing, the authority shall make a final determination of eligibility and give notice of the determination pursuant to Section 39-3-1.1 NMSA 1978. Any person or governmental entity participating in the hearing may appeal the final determination by filing a notice of appeal with the district court pursuant to Section 39-3-1.1 NMSA 1978;

(3) public utilities and other persons willing and able to provide money for, acquire, maintain and operate the eligible facilities described in the notice shall have the following time period to notify the authority of intention and ability to provide money for, acquire, maintain and operate the eligible facilities described in the notice:

(a) within ninety days of the date of the last publication of the initial notice if no challenge is received pursuant to Paragraph (2) of this subsection; or

(b) within ninety days of the date of the notice of determination if a challenge is received pursuant to Paragraph (2) of this subsection; and

(4) in the absence of notification by a public utility or other person pursuant to Paragraph (3) of this subsection, or if a person, having given notice of intention to provide money for, acquire, maintain and operate the eligible facilities contemplated by the authority, fails to make a good faith effort to commence the same within twelve months from the date of notification by the authority of its intention, the authority may proceed to finance or plan, acquire, maintain and operate the eligible facilities originally contemplated, provided that a person that, within the time required, has made necessary applications to acquire federal, state, local or private permits,

certificates or other approvals necessary to acquire the eligible facilities shall be deemed to have commenced the same as long as the person diligently pursues the permits, certificates or other approvals.

D. In soliciting and entering into contracts for the transmission or storage of electricity, the authority and any person leasing or operating eligible facilities financed or acquired by the authority shall, if practical, give priority to those contracts that will transmit or store electricity to be sold and consumed in New Mexico.

E. The authority and any eligible facilities acquired by the authority are not subject to the supervision, regulation, control or jurisdiction of the public regulation commission; provided that nothing in this subsection shall be interpreted to allow a public utility to include the cost of using eligible facilities in its rate base without the approval of the public regulation commission.

F. In exercising its powers and duties, the authority shall not own or control facilities unless:

(1) the facilities are leased to or held for lease or sale to a public utility or such other person approved by the public regulation commission;

(2) the operation, maintenance and use of the facilities are vested by lease or other contract in a public utility or such other person approved by the public regulation commission;

(3) the facilities are owned or controlled for a period of not more than one hundred eighty days after termination of a lease or contract described in Paragraph (1) or (2) of this subsection or after the authority gains possession of the facilities following a breach of such a lease or contract or as a result of bankruptcy proceedings; or

(4) the facilities do not affect in-state retail rates or electric service reliability.

G. A public utility subject to regulation of the public regulation commission pursuant to the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] may recover the capital cost of a project undertaken pursuant to the New Mexico Renewable Energy Transmission Authority Act from its retail customers only if the project has received a certificate of public convenience and necessity from the public regulation commission. A municipal utility exempt from regulation of the public regulation commission may recover such costs only if the project has been approved by the governing body of the municipality. Costs associated with a project undertaken pursuant to the New Mexico Renewable Energy Transmission Authority Act are not recoverable from retail utility customers except to the extent the costs are prudently incurred and the project is used and useful in serving those customers as determined by the public regulation commission.

History: Laws 2007, ch. 3, § 4. **Effective date:** — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 4 effective July 1, 2007.

62-16A-5. Renewable energy transmission bonds; appropriation of proceeds.

A. The authority is authorized to issue and sell revenue bonds, known as "renewable energy transmission bonds", payable solely from the renewable energy transmission bonding fund, in compliance with the New Mexico Renewable Energy Transmission Authority Act, for the purpose of entering into a project when the authority determines that the project is needed.

B. The net proceeds from the bonds are appropriated to the authority for the purpose of financing or acquiring eligible facilities.

History: Laws 2007, ch. 3, § 5. **Effective date:** — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 5 effective July 1, 2007.

62-16A-6. Renewable energy transmission bonding fund created; money in the fund pledged.

A. The "renewable energy transmission bonding fund" is created in the authority. The fund shall consist of revenues received by the authority from operating or leasing eligible facilities, fees and service charges collected and, if the authority has provided financing for eligible

facilities, money from payments of principal and interest on loans. The authority may create separate accounts within the fund in connection with any issuance of renewable energy transmission bonds and may deposit in such separate accounts revenues received by the authority derived from the financing or leasing of eligible facilities. Any such separate account shall be held by a trustee acting under a trust indenture relating to those bonds. Earnings of the fund or any separate account shall be credited to the fund or the applicable separate account. Balances in the fund at the end of any fiscal year shall remain in the fund, except as provided in this section.

B. Money in the fund shall be deposited in a bank designated by the authority in an account or accounts as the authority may establish. Money in accounts shall be withdrawn on the order of persons whom the authority may authorize. All deposits of money shall be secured in such manner as the authority may determine. The state auditor and the state auditor's legally authorized representatives shall periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The authority shall pay a reasonable fee for the examination as determined by the state auditor.

C. Money in the renewable energy transmission bonding fund is pledged for the payment of principal and interest on bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act. Money in any separate account may be pledged solely to payment of bonds for which the separate account was created. Money in the fund or any separate account is appropriated to the authority for the purpose of paying debt service, including redemption premiums, on the bonds and the expenses incurred in the issuance, payment and administration of the bonds.

D. On the last day of January and the last day of July of each year, the authority shall estimate the amount needed to make debt service and other payments during the next twelve months from the renewable energy transmission bonding fund or any separate account created in the bond fund on the bonds plus the amount that may be needed for any required reserves or other requirements as may be set forth in the trust indenture related to the bonds. The authority shall transfer to the renewable energy transmission authority operational fund any balance in the renewable energy transmission bonding fund or any separate account created in the bond fund above the estimated amounts. Payments for administrative costs shall be deposited in the renewable energy transmission authority operational fund.

E. Bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act shall be payable solely from the renewable energy transmission bonding fund or from any separate account, created within the bond fund or, with the approval of the bondholders, such other special funds as may be provided by law and do not create an obligation or indebtedness of the state within the meaning of any constitutional provision. No breach of any contractual obligation incurred pursuant to that act shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not general obligations for which the state's full faith and credit is pledged.

F. The state does hereby pledge that the renewable energy transmission bonding fund, including any separate account within the fund, shall be used only for the purposes specified in this section and pledged first to pay the debt service on the bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act. The state further pledges that any law requiring the deposit of revenues in the renewable energy transmission bonding fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the renewable energy transmission bonding fund is dedicated as provided in this section.

History: Laws 2007, ch. 3, § 6; 2011, ch. 33, § 2.

The 2011 amendment, effective July 1, 2011, authorized the authority to create separate accounts, held by a trustee under a trust indenture, in connection with the issuance of bonds and to deposit revenues from eligible facilities into the accounts; added Subsection B to

permit money in the fund to be deposited in a bank and to be withdrawn by persons authorized by the authority; in Subsection C, limited the pledge of money in separate accounts to the bonds for which the account was created; and in Subsection D, required that payments for administrative costs be deposited in the operation fund.

62-16A-7. Authority to refund bonds.

The authority may issue and sell at public or private sale bonds to refund outstanding renewable energy transmission bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof, when, in its opinion, such action will be beneficial to the state.

History: Laws 2007, ch. 3, § 7.

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 7 effective July 1, 2007.

62-16A-8. Renewable energy transmission bonds; form; execution.

A. The authority, except as otherwise specifically provided in the New Mexico Renewable Energy Transmission Authority Act, shall determine at its discretion the terms, covenants and conditions of the bonds, including, but not limited to, date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering the general and technical aspects of the issuance of the bonds.

B. The bonds shall be in such form as the authority may determine, and successive issues shall be identified by alphabetical, numerical or other proper series designation.

C. Bonds shall be signed and attested by the executive director of the authority and shall be executed with the facsimile signature of the chair of the authority and the facsimile seal of the authority, except for bonds issued in book entry or similar form without the delivery of physical securities. Any interest coupons attached to the bonds shall bear the facsimile signature of the executive director of the authority, which officer, by the execution of the bonds, shall adopt as the executive director's own signature the facsimile thereof appearing on the coupons. Except for bonds issued in book entry or similar form without the delivery of physical securities, the Uniform Facsimile Signature of Public Officials Act [6-9-6 through 6-9-6 NMSA 1978] shall apply, and the authority shall determine the manual signature to be affixed on the bonds.

History: Laws 2007, ch. 3, § 8.

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 8 effective July 1, 2007.

62-16A-9. Procedure for sale of renewable energy transmission bonds.

A. Bonds shall be sold by the authority at such times and in such manner as the authority may elect, either at private sale for a negotiated price or to the highest bidder at public sale for cash at par, above par or below par and accrued interest.

B. In connection with any public sale of the bonds, the authority shall publish a notice of the time and place of sale in a newspaper of general circulation in the state and also in a recognized financial journal outside the state. The publication shall be made once each week for two consecutive weeks prior to the date fixed for such sale, the last publication to be two business days prior to the date of sale. The notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale and the place, day and hour at which sealed bids therefor shall be received. All bids, except those of the state, shall be accompanied by a deposit of two percent of the principal amount of the bonds. Deposits of unsuccessful bidders shall be returned upon rejection of the bid. At the time and place specified in such notice, the authority shall open the bids in public and shall award the bonds, or any part thereof, to the bidder or bidders offering the best price. The authority may reject any or all bids and readvertise.

C. The authority may sell a bond issue, or any part thereof, to the state or to one or more investment bankers or institutional investors at private sale.

History: Laws 2007, ch. 3, § 9; 2011, ch. 33, § 3.

The 2011 amendment, effective July 1, 2011, authorized bonds to be sold at par, above par, or below par.

62-16A-10. New Mexico renewable energy transmission authority act is full authority for issuance of bonds; bonds are legal investments.

A. The New Mexico Renewable Energy Transmission Authority Act is, without reference to any other act of the legislature, full authority for the issuance and sale of renewable energy transmission bonds, which bonds shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978] and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

B. The bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

History: Laws 2007, ch. 3, § 10.

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 10 effective July 1, 2007.

62-16A-11. Suit may be brought to compel performance of officers.

Any holder of bonds or any person or officer being a party in interest may sue to enforce and compel the performance of the provisions of the New Mexico Renewable Energy Transmission Authority Act.

History: Laws 2007, ch. 3, § 11.

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 11 effective July 1, 2007.

62-16A-12. Renewable energy transmission bonds tax exempt.

All renewable energy transmission bonds are exempt from taxation by the state or any of its political subdivisions.

History: Laws 2007, ch. 3, § 12.

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 12 effective July 1, 2007.

62-16A-13. Renewable energy transmission authority operational fund.

The "renewable energy transmission authority operational fund" is created in the authority. The fund shall consist of money appropriated and transferred to the fund. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the authority for the purpose of carrying out the provisions of the New Mexico Renewable Energy Transmission Authority Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. The authority is authorized to establish procedures required to administer the fund in accordance with the New Mexico Renewable Energy Transmission Authority Act and state law.

History: Laws 2007, ch. 3, § 13; 2011, ch. 33, § 4.

The 2011 amendment, effective July 1, 2011, eliminated the requirement that disbursement of funds be

made on warrants drawn by the secretary of finance and administration, and authorized the authority to establish procedures to administer the fund.

62-16A-14. Report to legislature.

The authority shall submit a report of its activities to the governor and to the legislature not later than December 1 of each year. Each report shall set forth a complete operating and financial statement covering its operations for the previous fiscal year.

History: Laws 2007, ch. 3, § 14.

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 14 effective July 1, 2007.

62-16A-15. Legislative oversight.

A. In addition to its other duties, the New Mexico finance authority oversight committee [6-21-30 NMSA 1978] shall:

- (1) monitor and oversee the operation of the authority;
- (2) meet on a regular basis to receive and review reports from the authority on implementation of the provisions of the New Mexico Renewable Energy Transmission Authority Act and to review rules proposed for adoption pursuant to that act;
- (3) review and provide assistance and advice to the authority before the authority enters into a project;
- (4) undertake an ongoing examination of the statutes, constitutional provisions, regulations and court decisions governing energy transmission and renewable energy development; and
- (5) report its findings and recommendations, including recommended legislation or necessary changes, to the governor, to the public regulation commission and to each session of the legislature. The report and proposed legislation shall be made available on or before December 15 of each year.

B. Once each calendar quarter, the authority shall report to the legislative finance committee on all expenditures made and activities conducted in the fiscal year to date pursuant to the provisions of the New Mexico Renewable Energy Transmission Authority Act.

History: Laws 2007, ch. 3, § 15.

Effective date. — Laws 2007, ch. 3, § 19 made Laws 2007, ch. 3, § 15 effective July 1, 2007.

62-16A-16. Proprietary information.

Information obtained by the authority that is proprietary technical or business information shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978]. Proprietary confidential information includes power purchase agreements, costs of production, costs of transmission, transmission service agreements, credit reviews, detailed power models and financing statements.

History: Laws 2011, ch. 33, § 5.

Effective dates. — Laws 2011, ch. 33, § 6 made Laws 2011, ch. 33, § 5 effective July 1, 2011.

ARTICLE 16B

Community Solar

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| <p>Sec. 62-16B-1. Short title.</p> <p>62-16B-2. Definitions.</p> <p>62-16B-3. Community solar facility requirements.</p> <p>62-16B-4. Ownership of community solar facilities.</p> | <p>Sec. 62-16B-5. Subscription requirements.</p> <p>62-16B-6. Community solar program administration.</p> <p>62-16B-7. Public regulation commission; enforcement and rulemaking.</p> <p>62-16B-8. Rural electric distribution cooperatives.</p> |
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62-16B-1. Short title.

Sections 1 through 9 [8] [62-16B-1 to 62-16B-8 NMSA 1978] of this act may be cited as the "Community Solar Act."

History: Laws 2021, ch. 34, § 1.

Bracketed material. — The bracketed material "[8]", was inserted by the compiler to correct a typographical error and is not part of the law.

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

62-16B-2. Definitions.

As used in the Community Solar Act:

- A. "commission" means the public regulation commission;
- B. "community solar bill credit" means the credit value of the electricity generated by a community solar facility and allocated to a subscriber to offset the subscriber's electricity bill on the qualifying utility's monthly billing cycle as required by the Community Solar Act;
- C. "community solar bill credit rate" means the dollar-per-kilowatt-hour rate determined by the commission that is used to calculate a subscriber's community solar bill credit;
- D. "community solar facility" means a facility that generates electricity by means of a solar photovoltaic device, and subscribers to the facility receive a bill credit for the electricity generated in proportion to the subscriber's share of the facility's kilowatt-hour output;
- E. "community solar program" or "program" means the program created through the adoption of rules by the commission that allows for the development of community solar facilities and provides customers of a qualifying utility with the option of accessing solar energy produced by a community solar facility in accordance with the Community Solar Act;
- F. "Indian nation, tribe or pueblo" means a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico;
- G. "low-income customer" means a residential customer of a qualifying utility with an annual household income at or below eighty percent of area median income, as published by the United States department of housing and urban development, or that is enrolled in a low-income program facilitated by the state or a low-income energy program led by the qualifying utility or as determined by the commission;
- H. "low-income service organization" means an organization that provides services, assistance or housing to low-income customers and may include a local or central tribal government, a chapter house or a tribally designated housing entity;
- I. "nameplate capacity" means the maximum rated output of electric power production equipment that is commonly indicated on a nameplate physically attached to the generator and expressed in megawatts alternating current;
- J. "native community solar project" means a community solar facility that is sited in New Mexico on the land of an Indian nation, tribe or pueblo and that is owned or operated by a subscriber organization that is an Indian nation, tribe or pueblo or a tribal entity or in partnership with a third-party entity;
- K. "qualifying utility" means an investor-owned electric public utility certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] or a rural electric distribution cooperative that has opted in to the community solar program;
- L. "subscriber" means a retail customer of a qualifying utility that owns a subscription to a community solar facility and that is by rate class a residential retail customer or a small commercial retail customer or, regardless of rate class, is a nonprofit organization, a religious organization, an Indian nation, tribe or pueblo or tribal entity, a municipality or a county in the state, a charter, private or public school as defined in Section 22-1-2 NMSA 1978, a community college as defined in Section 21-13-2 NMSA 1978 or a public housing authority;
- M. "subscriber organization" means an entity that owns or operates a community solar facility and may include a qualifying utility, a municipality, a county, a for-profit or nonprofit entity or organization, an Indian nation, tribe, or pueblo, a local tribal governance structure or other tribal entity authorized to transact business in New Mexico;
- N. "subscription" means a contract for a community solar subscription entered into between a subscriber and a subscriber organization for a share of the nameplate capacity from a community solar facility;
- O. "total aggregate retail rate" means the total amount of a qualifying utility's demand, energy and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective

rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills;

P. "tribal entity" means an enterprise, a nonprofit entity or organization or a political subdivision formed under the inherent sovereignty of an Indian nation, tribe or pueblo; and

Q. "unsubscribed electricity" means electricity, measured in kilowatt-hours, generated by a community solar facility that is not allocated to a subscriber.

History: Laws 2021, ch. 34, § 2.

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

62-16B-3. Community solar facility requirements.

A. A community solar facility shall:

- (1) have a nameplate capacity rating of five megawatts alternating current or less;
- (2) be located in the service territory of the qualifying utility and be interconnected to the electric distribution system of that qualifying utility;
- (3) have at least ten subscribers;
- (4) have the option to be co-located with other energy resources, but shall not be co-located with other community solar facilities;
- (5) not allow a single subscriber to be allocated more than forty percent of the generating capacity of the facility; and
- (6) make at least forty percent of the total generating capacity of a community solar facility available in subscriptions of twenty-five kilowatts or less.

B. The provisions of this section shall not apply to a native community solar project; provided that a native community solar project shall be located in the service territory of a qualifying utility and be interconnected to the electric distribution system of that qualifying utility.

History: Laws 2021, ch. 34, § 3.

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

62-16B-4. Ownership of community solar facilities.

A. A community solar facility shall be owned or operated by a subscriber organization.

B. Third-party entities or subscriber organizations developing projects on the land of an Indian nation, tribe, or pueblo are subject to tribal jurisdiction.

C. Notwithstanding any provision of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] to the contrary, a person not otherwise a public utility shall not be deemed to be a public utility subject to the provisions of the Public Utility Act solely because the person owns, controls or operates all or any part of a community solar facility.

History: Laws 2021, ch. 34, § 4.

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

62-16B-5. Subscription requirements.

A. A subscription shall be:

- (1) sized to supply no more than one hundred percent of the subscriber's average annual electricity consumption; and

(2) transferable and portable within the qualifying utility service territory.

B. The provisions of this section shall not apply to a native community solar project; provided that subscriptions to a native community solar project shall be transferable and portable within the qualifying utility service territory.

History: Laws 2021, ch. 34, § 5.

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

62-16B-6. Community solar program administration.

A. A qualifying utility shall:

(1) acquire the entire output of a community solar facility connected to its distribution system;

(2) apply community solar bill credits to subscriber bills within one billing cycle following the cycle during which the energy was generated by the community solar facility;

(3) provide community solar bill credits to a community solar facility's subscribers for not less than twenty-five years from the date the community solar facility is first interconnected;

(4) carry over any amount of a community solar bill credit that exceeds the subscriber's monthly bill and apply it to the subscriber's next monthly bill unless and until the subscriber cancels service with the qualifying utility; and

(5) on a monthly basis and in a standardized electronic format, provide to the subscriber organization a report indicating the total value of community solar bill credits generated by the community solar facility in the prior month as well as the amount of the community solar bill credits applied to each subscriber.

B. A subscriber organization shall, on a monthly basis and in a standardized electronic format, provide to the qualifying utility a list indicating the kilowatt-hours of generation attributable to each subscriber. Subscriber lists may be updated monthly to reflect canceling subscribers and to add new subscribers.

C. If a community solar facility is not fully subscribed in a given month, the unsubscribed energy may be rolled forward on the community solar facility account for up to one year from its month of generation and allocated by the subscriber organization to subscribers at any time during that period. At the end of that period, any undistributed bill credit shall be removed, and the unsubscribed energy shall be purchased by the qualifying utility at its applicable avoided cost of energy rate as approved by the commission.

D. The environmental attributes, including renewable energy certificates, associated with a community solar facility shall be owned by the qualifying utility to whose electric distribution system the community solar facility is interconnected; provided that environmental attributes associated with a native community solar project shall be owned by the owner of the native community solar project.

E. Nothing in the Community Solar Act shall preclude an Indian nation, tribe or pueblo from using financial mechanisms other than subscription models, including virtual and aggregate net-metering, for native community solar projects.

History: Laws 2021, ch. 34, § 6.

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

62-16B-7. Public regulation commission; enforcement and rulemaking.

A. The commission shall administer and enforce the rules and provisions of the Community Solar Act, including regulation of subscriber organizations in accordance with the Community Solar Act and oversight and review of the consumer protections established for the community solar program.

B. The commission shall adopt rules to establish a community solar program by no later than April 1, 2022. The rules shall:

(1) provide an initial statewide capacity program cap of two hundred megawatts alternating current proportionally allocated to investor-owned utilities until November 1, 2024. The statewide capacity program cap shall exclude native community solar projects and rural electric distribution cooperatives;

(2) establish an annual statewide capacity program cap to be in effect after November 1, 2024;

(3) require thirty percent of electricity produced from each community solar facility to be reserved for low-income customers and low-income service organizations. The commission shall issue guidelines to ensure the carve-out is achieved each year and develop a list of low-income service organizations and programs that may pre-qualify low-income customers;

(4) establish a process for the selection of community solar facility projects and allocation of the statewide capacity program cap, consistent with Section 13-1-21 NMSA 1978 regarding resident business, Native American resident business, resident veteran business and Native American resident veteran business preferences;

(5) require a qualifying utility to file the tariffs, agreement or forms necessary for implementation of the community solar program;

(6) establish reasonable, uniform, efficient and non-discriminatory standards, fees and processes for the interconnection of community solar facilities that are consistent with the commission's existing interconnection rules and interconnection manual that allows a qualifying utility to recover reasonable costs for administering the community solar program and interconnection costs for each community solar facility, such that a qualifying utility and its non-subscribing customers do not subsidize the costs attributable to the subscriber organization pursuant to this paragraph;

(7) provide consumer protections for subscribers, including a uniform disclosure form that identifies the information that shall be provided by a subscriber organization to a potential subscriber, in both English and Spanish, and when appropriate, native or indigenous languages, to ensure fair disclosure of future costs and benefits of subscriptions, key contract terms, security interests and other relevant but reasonable information pertaining to the subscription, as well as grievance and enforcement procedures;

(8) provide a community solar bill credit rate mechanism for subscribers derived from the qualifying utility's total aggregate retail rate on a per-customer-class basis, less the commission-approved distribution cost components, and identify all proposed rules, fees and charges; provided that non-subscribers shall not subsidize costs attributable to subscribers; and provided further that if the commission determines that it is in the public interest for non-subscribers to subsidize subscribers, non-subscribers shall not be charged more than three percent of the non-subscribers' aggregate retail rate on an annual basis to subsidize subscribers;

(9) reasonably allow for the creation, financing and accessibility of community solar facilities; and

(10) provide requirements for the siting and co-location of community solar facilities with other energy resources; provided that community solar facilities shall not be co-located with other community solar facilities.

C. The commission may through rule establish a reasonable application fee for subscriber organizations that is designed to cover a portion of the administrative costs of the commission in carrying out the community solar program. Application fees collected by the commission shall be remitted to the state treasurer no later than the day after their receipt.

D. The commission shall solicit input from relevant state agencies, public utilities, low-income stakeholders, disproportionately impacted communities, potential owners or operators of community solar facilities, Indian nations, tribes and pueblos and other interested parties in its rulemaking process.

E. By no later than November 1, 2024, the commission shall provide to the appropriate interim legislative committee a report on the status of the community solar program, including the development of community solar facilities, the participation of investor-owned utilities and rural electric distribution cooperatives, low-income participation, the adequacy of facility size, proposals for alternative rate structures and bill credit mechanisms, cross-subsidization issues, local developer project selection and expansion of the local solar industry, community solar facilities' effect

on utility compliance with the renewable portfolio standard and an evaluation of the effectiveness of the commission's rules to implement the Community Solar Act and any recommended changes.

History: Laws 2021, ch. 34, § 7; 2022, ch. 6, § 4.

The 2022 amendment, effective July 1, 2022, amended an existing provision that required the public regulation commission to establish a process for the selection of community solar facility projects and allocation of the statewide capacity program cap regarding resident businesses and resident veteran businesses to include Native

American resident businesses and Native American resident veteran businesses; and in Subsection B, Paragraph B(4), after "regarding resident business", added "Native American resident business", and after "resident veteran business", added "and Native American resident veteran business".

62-16B-8. Rural electric distribution cooperatives.

A rural electric distribution cooperative may opt in to the community solar program and provide interconnection and retail electric services to community solar developments on a per-project or system-wide basis within its service territory. The decision of a rural electric distribution cooperative to opt in to the community solar program shall be in the sole discretion of the cooperative's governing board.

History: Laws 2021, ch. 34, § 8.

Effective dates. — Laws 2021, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

ARTICLE 17

Efficient Use of Energy

Sec.

- 62-17-1. Short title.
- 62-17-2. Repealed.
- 62-17-3. Policy.
- 62-17-4. Definitions.
- 62-17-5. Commission approval; energy efficiency and load management programs; disincentives.
- 62-17-6. Cost recovery.

Sec.

- 62-17-7. Alternative energy efficiency provider.
- 62-17-8. Measurement and verification.
- 62-17-9. Self-directed programs for customers; exemptions.
- 62-17-10. Integrated resource planning.
- 62-17-11. Distribution cooperative utilities.

62-17-1. Short title.

Chapter 62, Article 17 NMSA 1978 may be cited as the "Efficient Use of Energy Act".

History: Laws 2005, ch. 341, § 1; 2007, ch. 4, § 12.

The 2007 amendment, effective July 1, 2007, changed the reference from "Sections 1 through 11 of this act" to "Chapter 62, Article 17 NMSA 1978".

62-17-2. Repealed.

Repeals. — Laws 2019, ch. 202, § 4 repealed 62-17-2 NMSA 1978, as enacted by Laws 2005, ch. 341, § 2, relating to findings, effective June 14, 2019. For provisions

of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

62-17-3. Policy.

It is the policy of the Efficient Use of Energy Act that public utilities, distribution cooperative utilities and municipal utilities include all cost-effective energy efficiency and load management programs in their energy resource portfolios, that regulatory disincentives to public utility development of cost-effective energy efficiency and load management be removed in a manner that balances the public interest, consumers' interests and investors' interests and that the commission provide public utilities an opportunity to earn a profit on cost-effective energy efficiency and load

management resources that, with satisfactory program performance, is financially more attractive to the utility than supply-side resources.

History: Laws 2005, ch. 341, § 3; 2008, ch. 24, § 4.
The 2008 amendment, effective May 14, 2008, provided that utilities may be permitted to earn a profit on

cost-effective energy efficiency and load management resources that are financially more attractive than supply-side resources.

62-17-4. Definitions.

As used in the Efficient Use of Energy Act:

- A. "achievable" means those energy efficiency or load management resources available to the utility using its best efforts;
- B. "commission" means the public regulation commission;
- C. "cost-effective" means that the energy efficiency or load management program meets the utility cost test;
- D. "customer" means a utility customer at a single, contiguous field, location or facility, regardless of the number of meters at that field, location or facility;
- E. "distribution cooperative utility" means a utility with distribution facilities organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978] or similarly organized in other states;
- F. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity and natural gas without reducing the amount or quality of energy services;
- G. "large customer" means a customer with electricity consumption greater than seven thousand megawatt-hours per year or natural gas use greater than three hundred sixty thousand decatherms per year;
- H. "load management" means measures or programs that target equipment or devices to result in decreased peak electricity demand or shift demand from peak to off-peak periods;
- I. "program costs" means the prudent and reasonable costs of developing and implementing energy efficiency and load management programs, but "program costs" does not include charges for incentives or the removal of regulatory disincentives;
- J. "public utility" means a public utility that is not also a distribution cooperative utility; and
- K. "utility cost test" means a standard that is met if the monetary costs that are borne by the public utility and that are incurred to develop, acquire and operate energy efficiency or load management resources on a life-cycle basis are less than the avoided monetary costs associated with developing, acquiring and operating the associated supply-side resources.

History: Laws 2005, ch. 341, § 4; 2008, ch. 24, § 5; 2013, ch. 124, § 1; 2013, ch. 220, § 1; 2019, ch. 202, § 1.

The 2019 amendment, effective June 14, 2019, revised the definition of "utility cost test" as used in the Efficient Use of Energy Act; in Subsection K, after "supply-side resources," deleted "In developing this test for energy efficiency and load management programs directed to low-income customers, the commission shall either quantify or assign a reasonable value to reductions in working capital, reduced collection costs, lower bad debt expense, improved customer service effectiveness and other appropriate factors as utility system economic benefits."

The 2013 amendment, effective July 1, 2013, defined "program costs"; in Subsection C, after "program meets

the", deleted "total resource" and added "utility"; added Subsection I; and in Subsection K, in the first sentence, at the beginning of the sentence, deleted "total resource" and added "utility", after "borne by the", added "public", and after "public utility", deleted "and the participants".

The 2008 amendment, effective May 14, 2008, added Subsections A and D and provided in Subsection J that the total resource cost test is met if the cost of energy efficiency or load management resources is less than the avoided costs of supply-side resources and that in developing programs directed to low-income customers, the commission shall qualify or assign a reasonable value to reductions of monetary and other factors as utility system economic benefits.

62-17-5. Commission approval; energy efficiency and load management programs; disincentives.

- A. Pursuant to the findings and purpose of the Efficient Use of Energy Act, the commission shall consider public utility acquisition of cost-effective energy efficiency and load management resources to be in the public interest.

B. The commission shall direct public utilities to evaluate and implement cost-effective programs that reduce energy demand and consumption.

C. Before the commission approves an energy efficiency and load management program for a public utility, it shall find that the portfolio of programs is cost-effective and designed to provide every affected customer class with the opportunity to participate and benefit economically. The commission shall determine the cost-effectiveness of energy efficiency and load management measures using the utility cost test. In determining life-cycle costs and benefits of energy efficiency programs, the commission shall not adjust for taxes when selecting a discount rate. In determining life-cycle costs and benefits for energy efficiency and load management programs directed to low-income customers, the commission shall either quantify or assign a reasonable value to:

- (1) reductions in working capital;
- (2) reduced collection costs;
- (3) lower bad-debt expense;
- (4) improved customer service effectiveness; and
- (5) other appropriate factors as utility system economic benefits.

D. The commission shall act expeditiously on public utility requests for approval of energy efficiency or load management programs.

E. Public utilities shall obtain commission approval of energy efficiency and load management programs before they are implemented. Public utilities proposing new energy efficiency and load management programs shall, before seeking commission approval, solicit nonbinding recommendations on the design, implementation and use of third-party energy service contractors through competitive bidding on the programs from commission staff, the attorney general, the energy, minerals and natural resources department and other interested parties. The commission may for good cause require public utilities to solicit competitive bids for energy efficiency and load management resources.

F. The commission shall:

(1) upon petition or its own motion, identify and remove regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures in a manner that balances the public interest, consumers' interests and investors' interests;

(2) upon petition by a public utility, remove regulatory disincentives through the adoption of a rate adjustment mechanism that ensures that the revenue per customer approved by the commission in a general rate case proceeding is recovered by the public utility without regard to the quantity of electricity or natural gas actually sold by the public utility subsequent to the date the rate took effect. Regulatory disincentives removed through a rate adjustment mechanism shall be separately calculated for the rate class or classes to which the mechanism applies and collected or refunded by the utility through a separately identified tariff rider that shall not be used to collect commission-approved energy efficiency and load management program costs and incentives;

(3) provide public utilities an opportunity to earn a profit on cost-effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more attractive to the utility than supply-side utility resources; and

(4) not reduce a utility's return on equity based on approval of a disincentive removal mechanism or profit incentives pursuant to the Efficient Use of Energy Act.

G. Public utilities providing electricity and natural gas service to New Mexico customers shall, subject to commission approval, acquire the cost-effective and achievable energy efficiency and load management resources available in their service territories. This requirement, however, for public utilities providing electricity service, shall not be less than savings of five percent of 2020 total retail kilowatt-hour sales to New Mexico customer classes that have the opportunity to participate in calendar year 2025 as a result of energy efficiency and load management programs implemented in years 2021 through 2025. No later than June 30, 2025, the commission shall adopt, through rulemaking, energy savings targets for electric utilities for years 2026 through 2030 based on cost-effective and achievable energy savings and provide utility incentives based on savings achieved.

H. A public utility that determines it cannot achieve the minimum requirements established in Subsection G of this section shall report to the commission on why it cannot meet those requirements and shall propose alternative requirements based on acquiring cost-effective and achievable

energy efficiency and load management resources. If the commission determines, after hearing, that the minimum requirements of Subsection G of this section exceed the achievable amount of energy efficiency and load management available to the public utility or that the program costs of energy efficiency and load management to achieve the minimum requirements of Subsection G of this section exceed the program costs funding established in Subsection A of Section 62-17-6 NMSA 1978, the commission shall establish lower minimum energy savings requirements for the utility based on the maximum amount of energy efficiency and load management that it determines can be achieved.

History: Laws 2005, ch. 341, § 5; 2007, ch. 4, § 13; 2008, ch. 24, § 6; 2013, ch. 124, § 2; 2013, ch. 220, § 2; 2019, ch. 202, § 2; 2020, ch. 17, § 1.

The 2020 amendment, effective May 20, 2020, clarified that a rate adjustment mechanism may be adopted to ensure that revenue per customer in a rate case remains constant without regard to the quantity of either electricity or natural gas sold; and in Subsection F, Paragraph F(2), after "quantity of electricity", added "or natural gas".

The 2019 amendment, effective June 14, 2019, prohibited the commission from adjusting the discount rate for taxes when considering the life-cycle costs and benefits of energy and efficiency and load management programs; in Subsection C, after "utility cost test.", added "In determining life-cycle costs and benefits of energy efficiency programs, the commission shall not adjust for taxes when selecting a discount rate. In determining life-cycle costs and benefits for energy efficiency and load management programs directed to low-income customers, the commission shall either quantify or assign a reasonable value to.", and added new Paragraphs C(1) through C(5); in Subsection F, added new paragraph designation "(1)", in Paragraph F(1), after "identify", added "and remove", after "load management measures", deleted "and ensure that they are removed", and after "investors' interests", deleted "The commission shall also", added new Paragraph F(2), new paragraph designation "(3)" and new Paragraph F(4); and in Subsection G, after "five percent of", deleted "2005" and added "2020", after "sales to New Mexico", deleted "customers" and added "customer classes that have the opportunity to participate", after "calendar year", deleted "2014 and eight percent of 2005 total retail kilowatt-hour sales to New Mexico customers in 2020" and added "2025", and after "programs implemented", deleted "starting in 2007" and added "in years 2021 through 2025. No later than June 30, 2025, the commission shall adopt, through rulemaking, energy savings targets for electric utilities for years 2026 through 2030 based on cost-effective and achievable energy savings and provide utility incentives based on savings achieved".

The 2013 amendment, effective July 1, 2013, required public utilities to acquire available cost-effective and achievable energy efficiency and load management resources; in Subsection C, in the second sentence, after "measures using the", deleted "total resource" and added "utility"; in Subsection E, in the third sentence, after "for good cause require", added "public"; in Subsection G, in the second sentence, after "calendar year 2014 and" deleted "ten" and added "eight"; and in Subsection H, in the first sentence, after "A", added "public", and in the second sentence, after "load management available to the", added "public" and after "public utility", added "or that the program costs of energy efficiency and load management to achieve the minimum requirements of Subsection G of this section exceed the program costs funding established in Subsection A of Section 62-17-6 NMSA 1978".

The 2008 amendment, effective May 14, 2008, authorized the commission to require competitive bids for procurement of energy efficiency and load management resources in Subsection E; required the commission to provide utilities an opportunity to earn a profit on

cost-effective energy efficiency and load management resources that are more financially attractive than supply-side resources in Subsection F; and added Subsections G and H.

The 2007 amendment, effective July 1, 2007, in Subsection F, added the provision that the commission shall act upon petition or its own motion to open a docket; changed "load management" to "load management measures"; added the requirement that if disincentives or barriers are found that an appropriate rate making treatment and performance-based, financial or other incentives be considered; and adds Subsection G.

ANNOTATIONS

Expenses incurred for energy efficiency programs. — In determining public utility electricity rates, the public regulation commission has authority to consider expenses incurred by a public utility for energy efficiency programs and to permit public utilities to earn returns on the operating expenses incurred from energy efficiency programs. *N.M. Att'y Gen. v. N.M. Pub. Regulation Comm'n*, 2013-NMSC-042.

Where the public regulation commission approved the utility's adder rates to allow the utility to earn a profit on expenditures on energy efficiency and load management measures by using an operating ratio approach, rather than the traditional return-on-rate-base method, the commission did not exceed the scope of its authority because the commission has discretion to determine the appropriate method to apply in establishing just and reasonable utility rates and the authority to allow utilities to earn a profit on energy efficiency and load management resource development that is not tied to capital investments. *N.M. Att'y Gen. v. N.M. Pub. Regulation Comm'n*, 2013-NMSC-042.

Just and reasonable rates. — Rates created under the Efficient Use of Energy Act must be determined by the same ratemaking principles that apply to determine just and reasonable rates under the Public Utility Act, Sections 62-3-1 NMSA 1978 et seq. *N.M. Att'y Gen. v. N.M. Pub. Regulation Comm'n*, 2011-NMSC-034, 150 N.M. 174, 258 P.3d 453.

Where the public regulation commission issued a rule that permitted utilities to recover an adder rate for kilowatt hours saved and reduced from annual demand due to energy efficiency programs; and the commission determined that the adder rate did not need to be cost-based, did not inquire into the utilities' revenue requirements or other traditional elements of the ratemaking process, and the utilities presented evidence only on the impact that the rule would have, because the adder rates were not evidence-based, cost-based or utility specific, there was no lawful basis for determining that the adder rates were just and reasonable. *N.M. Att'y General v. N.M. Pub. Regulation Comm'n*, 2011-NMSC-034, 150 N.M. 174, 258 P.3d 453.

Substantial evidence supported final order. — Where the public regulation commission had approved the utility's adder rates for expenditures on energy efficiency and load management measures in a case decided

under regulations that the supreme court subsequently vacated; the prior case was never appealed; the commission docketed the present case to determine whether the adder rates approved in the prior case were consistent with the supreme court ruling; and the commission relied on the factual findings in the prior case to support its determination that the adder rates were consistent with the supreme court ruling, the final order in the present case was supported by substantial evidence and the

commission reasonably relied on the record in the prior case to support its determination because the present case involved a legal issue, not a ratemaking decision, the case did not depend upon any redetermination of facts adjudicated in the prior case, and the commission was required to review the record in the prior case in order to perform a legal review of the prior order. *N.M. Att'y. Gen. v. N.M. Pub. Regulation Comm'n*, 2013-NMSC-042.

62-17-6. Cost recovery.

A. A public utility that undertakes cost-effective energy efficiency and load management programs shall have the option of recovering its prudent and reasonable costs along with commission-approved incentives for demand-side resources and load management programs implemented after the effective date of the Efficient Use of Energy Act through an approved tariff rider or in base rates, or by a combination of the two. Program costs and incentives may be deferred for future recovery through creation of a regulatory asset. Funding for program costs shall be as follows:

(1) for investor-owned electric utilities, no less than three percent and no more than five percent of customer bills, excluding gross receipts taxes and franchise and right-of-way access fees, or seventy-five thousand dollars (\$75,000) per customer per calendar year, whichever is less, for customer classes with the opportunity to participate; and

(2) for gas utilities, no more than five percent of total annual revenues or seventy-five thousand dollars (\$75,000) per customer per calendar year.

B. Provided that the public utility's total portfolio of programs remains cost-effective, no less than five percent of the amount received by the public utility for program costs shall be specifically directed to energy-efficiency programs for low-income customers.

C. Unless otherwise ordered by the commission, a tariff rider approved by the commission shall:

- (1) require language on customer bills explaining program benefits; and
- (2) be applied on a monthly basis.

D. A tariff rider proposed by a public utility to fund approved energy efficiency and load management programs shall go into effect thirty days after filing, unless suspended by the commission for a period not to exceed one hundred eighty days. If the tariff rider is not approved or suspended within thirty days after filing, it shall be deemed approved as a matter of law. If the commission has not acted to approve or disapprove the tariff rider by the end of an ordered suspension period, it shall be deemed approved as a matter of law. The commission shall approve utility reconciliations of the tariff rider annually.

History: Laws 2005, ch. 341, § 2; 2008, ch. 24, § 3; 2019, ch. 202, § 3.

The 2019 amendment, effective June 14, 2019, revised cost recovery percentages; in Subsection A, after "Funding for program costs", deleted "for investor-owned electric utilities", and after "shall be", deleted "three" and added "as follows", added paragraph designations "(1)" and "(2)", in Paragraph A(1), after the paragraph designation, added "for investor-owned electric utilities, no less than three percent and no more than five", after "opportunity to participate", deleted "Funding for annual program costs", in Paragraph A(2), after "gas utilities", deleted "shall not exceed three" and added "no more than five", after "total annual revenues", deleted "nor shall charges exceed" and added "or"; added new subsection designations "B" and "C", deleted former subsection designation "B." and redesignated former Subsection C as Subsection D; and in Subsection C, added paragraph designations "(1)" and "(2)", in Paragraph C(1), after "benefits; and", deleted "The tariff

rider shall", and in Paragraph C(2), after "monthly basis", deleted "unless otherwise allowed by the commission".

The 2013 amendment, effective July 1, 2013, limited public utility cost recovery options; and in Subsection A, deleted the former third sentence, which provided for a limit of seventy-five thousand dollars per year to the tariff rider and the customer impact for utility customers and added the third, fourth and fifth sentences.

Compiler's notes. — Laws 2013, ch. 124, § 3 and Laws 2013, ch. 220, § 3, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 220, § 3. *See* 12-1-8 NMSA 1978.

The 2008 amendment, effective May 14, 2008, in Subsection A, permitted a utility to recover costs and incentives for demand-side resources and load management resources through a tariff rider or base rates, or both and deletes the prohibition of cross subsidies of energy efficiency and load management activities and supply side activities.

The 2007 amendment, effective July 1, 2007, in Subsection A, changed the limitation that the tariff rider not exceed the lower of one and one-half percent to the

limitation that the tariff rider not exceed the commission's approved tariff.

62-17-7. Alternative energy efficiency provider.

With a public utility's consent, the commission may allow for an alternative entity to provide ratepayer-funded energy efficiency and load management to customers of that public utility.

History: Laws 2005, ch. 341, § 7.

Effective dates. — Laws 2005, ch. 341, § 13 made Laws 2005, ch. 341, § 7 effective April 7, 2005.

62-17-8. Measurement and verification.

A. A public utility shall submit to the commission an annual report that provides information relating to the actions taken by the public utility to comply with the standards of the Efficient Use of Energy Act. The report shall include documentation of program expenditures, customer participation levels, estimated energy savings, demand reductions and customer monetary savings resulting from programs, evaluation of the cost-effectiveness of expenditures, evaluation of the cost-effectiveness of self-directed programs, a qualitative assessment of program effectiveness and any other information the commission may require pursuant to its rulemaking authority.

B. At least every three years, a public utility shall submit to the commission a comprehensive measurement, verification and program evaluation report prepared by an independent program evaluator. In preparing the report, the independent program evaluator shall measure and verify energy and demand savings, determine cost-effectiveness of the programs, assess the performance of the public utility in implementing energy efficiency and load management programs and, as appropriate, provide recommendations on how program performance can be improved.

C. The commission may direct a public utility to modify or terminate a particular energy efficiency or load management program if, after an adequate period for implementation of the program, the commission determines the program is not sufficiently meeting its goals and purposes. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its reasonable and prudent program costs.

History: Laws 2005, ch. 341, § 8; 2008, ch. 24, § 8.

The 2008 amendment, effective May 14, 2008, in Subsection A, provided that the report shall include customer

participation levels, estimated energy savings, demand reductions and customer savings and a qualitative assessment program and added Subsection B.

62-17-9. Self-directed programs for customers; exemptions.

A. A large customer shall receive approval for a credit for and equal to the expenditures that customer has made at its facilities on and after January 1, 2005 toward cost-effective energy efficiency and load management. To receive approval, the large customer must demonstrate to the reasonable satisfaction of the utility or self-direct program administrator that its expenditures are cost-effective. Once approved, the credit may be used to offset up to seventy percent of the tariff rider authorized by the Efficient Use of Energy Act until the credit is exhausted. Eligible expenditures shall have a simple payback period of more than one year but less than seven years. Projects that have received rebates, financial support or other substantial program support from a utility are not eligible for a credit.

B. A large customer shall receive approval for an exemption to paying seventy percent of the tariff rider if the customer demonstrates to the reasonable satisfaction of the utility or self-direct program administrator that it has exhausted all cost-effective energy efficiency measures at its facility. As used in this section, "cost-effective" means all measures with a simple payback period of more than one year but less than seven years.

C. Large customers shall seek and receive approval for credits and exemptions under this provision from the utility or a commission-approved self-direct program administrator. Approvals or

disapprovals by the utility or administrator shall be subject to commission review. Any credit not fully utilized in the year it is received shall carry over to subsequent years. Implementation of credits shall be designed to minimize utility administrative costs.

D. Except as otherwise provided in this section, projects, expenditures and exemptions under this section shall be evaluated by an independent program evaluator using the same measurement and verification standards applying to utility programs, subject to appropriate protections for confidentiality, by the utility or a commission-approved self-direct program administrator and reported in the annual report to the commission pursuant to the Efficient Use of Energy Act.

History: Laws 2005, ch. 341, § 9.

Effective dates. — Laws 2005, ch. 341, § 13 made Laws 2005, ch. 341, § 9 effective April 7, 2005.

62-17-10. Integrated resource planning.

Pursuant to the commission's rulemaking authority, public utilities supplying electric or natural gas service to customers shall periodically file an integrated resource plan with the commission. Utility integrated resource plans shall evaluate renewable energy, energy efficiency, load management, distributed generation and conventional supply-side resources on a consistent and comparable basis and take into consideration risk and uncertainty of fuel supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. The preparation of resource plans shall incorporate a public advisory process. Nothing in this section shall prohibit public utilities from implementing cost-effective energy efficiency and load management programs and the commission from approving public utility expenditures on energy efficiency programs and load management programs prior to the commission establishing rules and guidelines for integrated resource planning. The commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this section. The commission shall take into account a public utility's resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements. The requirements of this section shall take effect one year following the commission's adoption of rules implementing the provisions of this section.

History: Laws 2005, ch. 341, § 10.

Effective dates. — Laws 2005, ch. 341, § 13 made Laws 2005, ch. 341, § 10 effective April 7, 2005.

ANNOTATIONS

The public regulation commission did not abuse its discretion in approving a contested stipulation.

— Where appellant appealed from a final order issued by the New Mexico public regulation commission (PRC) approving a contested stipulation granting the public service company of New Mexico (PNM) certificates of public convenience and necessity (CCN) to acquire new-generation resources and by filing a notice proposing to dismiss the protests to PNM's 2014 integrated resource plan (IRP), the PRC did not abuse its discretion in concluding that the supplemental stipulation fairly and justly resolved

the CCN proceedings, because the hearings below were conducted in conformity with the governing regulation, the hearing examiner correctly identified the substantive legal standards necessary to resolve the merits of the contest, afforded appellant, a non-stipulating party, an opportunity to be heard on the merits of the stipulation, and made an independent finding, supported by substantial evidence in the record, that the stipulation resolves the matters in dispute in a way that is fair, just and reasonable and in the public interest, and the PRC's decision to file a notice proposing to dismiss the protests to PNM's 2014 IRP was a lawful exercise of the PRC's discretion, because the issues addressed in the CCN proceedings were the very same issues at the heart of the 2014 IRP protest proceedings. *New Energy Econ. v. N.M. Pub. Regulation Comm'n*, 2018-NMSC-024.

62-17-11. Distribution cooperative utilities.

A. Distribution cooperative utilities shall periodically examine the potential to assist their customers in reducing energy consumption or peak electricity demand in a cost-effective manner. Based on these studies, by January 1, 2009, distribution cooperative utilities shall establish energy efficiency and load management targets and begin to implement cost-effective energy efficiency and load management programs that are economically feasible and practical for their members and customers. Approval for such programs shall reside with the governing body of each distribution cooperative utility and not with the commission.

B. Each distribution cooperative utility shall file with the commission concurrently with its annual report, a report that describes all of the distribution cooperative utility's programs or measures that promote energy efficiency, conservation or load management. The report shall set forth the costs of each of the programs or measures for the previous calendar year and the resulting effect on the consumption of electricity. In offering or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.

C. Each distribution cooperative utility shall include in the report required by Subsection B of this section a description of all programs or measures to promote energy efficiency, conservation or load management that are planned and the anticipated date for implementation.

D. Costs resulting from programs or measures to promote energy efficiency, conservation or load management may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in Subsection G of Section 62-8-7 NMSA 1978.

History: Laws 2005, ch. 341, § 11; 2008, ch. 24, § 9.

The 2008 amendment, effective May 14, 2008, required distribution cooperative utilities to establish

energy efficiency and load management targets and to implement programs by January 1, 2009.

ARTICLE 17A

Community Energy Efficiency Development Block Grant

Sec.

62-17A-1. Short title.

62-17A-2. Definitions.

62-17A-3. Community energy efficiency development block grant; program created; rulemaking; report to legislature.

62-17A-4. Community energy efficiency project requirements.

Sec.

62-17A-5. Required grant of authority.

62-17A-6. Selection of community energy efficiency projects.

62-17A-7. Community energy efficiency development block grant fund created; administration.

62-17A-1. Short title.

This act [62-17A-1 to 62-17A-7 NMSA 1978] may be cited as the "Community Energy Efficiency Development Block Grant Act".

History: Laws 2022, ch. 10, § 1.

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-2. Definitions.

As used in the Community Energy Efficiency Development Block Grant Act:

A. "affordable housing" means residential housing primarily for low-income persons, including housing currently occupied by low-income persons or housing that is affordable to low-income persons based on assessed value, rent or estimated mortgage;

B. "community energy efficiency project" means a project that provides improvements to residential buildings in an underserved community that will in the aggregate reduce energy consumption, energy-related operating costs or the carbon intensity of energy consumption;

C. "community partner" means an organization that provides services or outreach to an underserved community to implement a community energy efficiency project;

D. "department" means the energy, minerals and natural resources department;

E. "division" means the energy conservation and management division of the department;

F. "energy efficiency" means measures that target efficient energy consumer behavior, equipment or devices and result in a decrease in energy consumption without reducing the amount or

quality of energy services, and includes health and safety measures that use efficient equipment or devices to improve indoor air or drinking water quality;

G. "low-income person" means an individual, couple or family whose annual household adjusted gross income, as defined in Section 62 of the federal Internal Revenue Code of 1986, as that section may be amended or renumbered, does not exceed two hundred percent of the federal poverty level;

H. "registered apprenticeship program that promotes diversity" means an apprenticeship program registered pursuant to the Apprenticeship Assistance Act [Chapter 21, Article 19A NMSA 1978] that encourages diversity among participants, participation by those underrepresented in the industry associated with the apprenticeship program and participation from disadvantaged communities as determined by the workforce solutions department;

L. "residential housing" means:

(1) a building, structure or portion thereof that is primarily occupied or designed for or intended primarily for occupancy as a residence by one or more households, including congregate housing, manufactured homes and other facilities; or

(2) real property that is offered for sale or lease for the construction or location on that real property of a building, structure or portion thereof that is intended primarily for occupancy as a residence by one or more households; and

J. "underserved community" means an area in the state, including a county, municipality or neighborhood, or subset of an area, where:

(1) the median adjusted gross income, as defined in Section 62 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, does not exceed two hundred percent of the federal poverty level; or

(2) there is a high energy burden or limited access to energy efficiency services as determined by department rule.

History: Laws 2022, ch. 10, § 2.

Cross references. — For the federal Internal Revenue Code of 1986, see 26 U.S.C.

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-3. Community energy efficiency development block grant; program created; rulemaking; report to legislature.

A. The "community energy efficiency development program" is created and shall be administered by the division.

B. If state or federal funds have been deposited into the community energy efficiency block grant fund, the department shall:

(1) adopt rules to:

(a) administer the community energy efficiency development program;

(b) restrict eligibility for certain funds, if required by the entity that provided the funding to the program;

(c) govern the acceptance, evaluation and prioritization of applications submitted by qualified entities for grants made pursuant to the Community Energy Efficiency Development Block Grant Act;

(d) determine whether the status of a person or household is low-income; and

(e) assess whether the value, rent or estimated mortgage of residential housing is affordable to low-income persons;

(2) solicit, review and prioritize community energy efficiency project applications;

(3) make grants for community energy efficiency projects from the community energy efficiency development block grant fund; and

(4) approve and enter into contracts with grantees to implement selected community energy efficiency projects; provided that the contracts shall include project performance measures, penalties or other provisions that ensure the successful completion of the projects in accordance with Article 9, Section 14 of the constitution of New Mexico and shall require reporting on project performance, energy savings and non-energy benefits resulting from the energy efficiency measures.

C. The department shall not be required to carry out the responsibilities in Subsection B of this section in any year that there are insufficient funds available for making grants in the community energy efficiency block grant fund.

D. In a year in which state or federal funds have been deposited into the community energy efficiency block grant fund or in which a community energy efficiency project is in operation, the department and the New Mexico mortgage finance authority shall coordinate the work done in the state to implement energy efficiency measures.

E. By November 1 of each year in which a community energy efficiency project is in operation, the department shall provide to the interim legislative committee that addresses the status of the development of energy efficiency measures and programs a report on the status of participation in the community energy efficiency development program by people in underserved communities, the types of projects funded by grants made through the program and any recommended changes with respect to the program.

History: Laws 2022, ch. 10, § 3.

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-4. Community energy efficiency project requirements.

A. A county, municipality, Indian nation, tribe or pueblo or the New Mexico mortgage finance authority may submit an application to the department for a grant for a community energy efficiency project.

B. An application shall:

(1) describe the community energy efficiency project for which a grant is requested and how the project would support infrastructure improvements for affordable housing;

(2) describe how the community energy efficiency project would benefit an underserved community in which it is located;

(3) identify the targeted underserved community;

(4) set forth the energy efficiency improvements to residential units located within an underserved community that meet the following eligibility criteria pursuant to Article 9, Section 14 of the constitution of New Mexico:

(a) residential housing units occupied by low-income persons within an underserved community; or

(b) residential housing units within an underserved community that otherwise meet the criteria for housing that is affordable to low-income persons as established by the department in rule;

(5) propose a series of energy efficiency measures expected to reduce energy use in targeted households and the estimated reduction of energy use from the implementation of the measures;

(6) identify a service provider that will implement the energy efficiency measures in targeted households and set forth the experience of the service provider in working with the targeted underserved community;

(7) identify one or more community partners that will identify and work with targeted households to implement a community energy efficiency project in an underserved community and set forth the experience of the community partner in working with the targeted underserved community;

(8) set forth any commitment by a service provider or community partner to employ apprentices from a registered apprenticeship program that promotes diversity or to provide paid internships to persons from the targeted underserved community; and

(9) provide a project budget detailing anticipated expenditures and additional sources of funding that would complement a grant obtained pursuant to the Community Energy Efficiency Development Block Grant Act.

C. Notwithstanding the application requirements of Subsection B of this section, the New Mexico mortgage finance authority may submit an application that:

(1) describes the community energy efficiency project for which a grant is requested and how the project would support infrastructure improvements for affordable housing that would complement and not duplicate other energy efficiency programs in the state;

(2) either meets the requirements of Paragraphs (2) through (4) of Subsection B of this section or sets forth the energy efficiency improvements to residential housing units, regardless of whether the residential housing units are located in an underserved community; provided that the residential housing units meet the eligibility criteria established by the New Mexico mortgage finance authority pursuant to Article 9, Section 14 of the constitution of New Mexico; and provided further that the application describes how energy efficiency improvements to the residential housing units will help to reduce the energy burden of low-income households that may not qualify for other energy efficiency programs in the state;

(3) proposes a series of energy efficiency measures expected to reduce energy use in targeted households and the estimated reduction of energy use from the implementation of the measures;

(4) identifies a service provider that will implement the energy efficiency measures in targeted households and sets forth the experience of the service provider in working with underserved communities;

(5) identifies one or more community partners that will identify and work with targeted households and sets forth the experience of the community partner in working with underserved communities; and

(6) provides a project budget detailing anticipated expenditures and additional sources of funding that would complement a grant awarded pursuant to the Community Energy Efficiency Development Block Grant Act.

D. The department may require that applications meet additional criteria consistent with the goal of improving the energy efficiency, livability or public health and safety of affordable housing in underserved communities.

History: Laws 2022, ch. 10, § 4.

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-5. Required grant of authority.

A. The Community Energy Efficiency Development Block Grant Act is enacted to allow the state, a county or a municipality to provide or pay the costs of financing infrastructure necessary to support affordable housing projects as provided by Article 9, Section 14 of the constitution of New Mexico.

B. Prior to the department's final approval of an application for a grant pursuant to the Community Energy Efficiency Development Block Grant Act, an applicant that is a county or a municipality shall provide the department with a copy of the ordinance enacted by the county or municipality that provides the county's or municipality's formal approval for a specific community energy efficiency development block grant and includes in the ordinance the terms and conditions of the grant approved by the department. The department shall not approve an application for a community energy efficiency project if the county or municipality fails to enact an ordinance that gives formal approval for the terms and conditions approved by the department for the community energy efficiency development block grant and includes in the ordinance those exact terms and conditions.

C. Prior to the department's final approval of an application for a grant pursuant to the Community Energy Efficiency Development Block Grant Act, an applicant that is an Indian nation, tribe or pueblo shall provide the department with a copy of a resolution enacted by the Indian nation, tribe or pueblo that provides the Indian nation's, tribe's or pueblo's formal approval for a specific community energy efficiency development block grant and includes in the ordinance the terms and conditions of the grant approved by the department. The department shall not approve an application for a community energy efficiency project if the Indian nation, tribe or pueblo fails to enact a resolution that gives formal approval for the terms and conditions approved by the department for the community energy efficiency development block grant and includes in the resolution those exact terms and conditions.

D. Prior to the department's final approval of an application from the New Mexico mortgage finance authority for a grant pursuant to the Community Energy Efficiency Development Block Grant Act, the New Mexico mortgage finance authority shall provide the department with formal approval of the New Mexico mortgage finance authority to accept a specific community energy efficiency development block grant.

History: Laws 2022, ch. 10, § 5.

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-6. Selection of community energy efficiency projects.

A. When reviewing and selecting community energy efficiency projects for grants from the community energy efficiency development block grant fund, the department shall consider:

- (1) the estimated reduction in energy use from the project;
- (2) the geographic diversity of the portfolio of community energy efficiency projects to be approved by the department;
- (3) the experience of each community partner or service provider identified in the application in working with the targeted underserved community;
- (4) whether the application includes a commitment by a service provider or community partner to employ apprentices from a registered apprenticeship program that promotes diversity or to provide paid internships to persons from the targeted underserved communities;
- (5) the value of the project as a demonstration project to provide data for the effectiveness of implementing similar projects elsewhere; and
- (6) the degree to which the project benefits an underserved community, including any non-energy benefits and health benefits provided by the project.

B. Provided that the criteria are published in the project solicitation, the department may further consider in its review and selection of community energy efficiency projects:

- (1) the degree to which the project will protect public health, including protecting underserved communities from a public health threat such as the coronavirus disease 2019;
- (2) the degree to which the project will contribute to economic recovery, including from the coronavirus disease 2019 pandemic; or
- (3) the degree to which the project will reduce economic hardship of individual families due to the coronavirus disease 2019 pandemic.

C. In considering an application from the New Mexico mortgage finance authority, the department shall consider whether full or partial funding of the New Mexico mortgage finance authority application would:

- (1) promote geographic diversity of the portfolio of community energy efficiency projects;
- (2) reduce the energy burden of low-income persons, within or outside of underserved communities, who would not be likely to otherwise receive energy efficiency improvements through other state programs; or
- (3) help create a portfolio of community energy efficiency projects that would best meet the goals of the Community Energy Efficiency Development Block Grant Act.

History: Laws 2022, ch. 10, § 6.

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

62-17A-7. Community energy efficiency development block grant fund created; administration.

A. The "community energy efficiency development block grant fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations to the fund, federal funding for purposes consistent with the fund and income from investment of the fund; provided that federal funding allocated to the state for the federal weatherization assistance

program pursuant to 42 U.S.C. Section 6863 or the federal low income home energy assistance program pursuant to 42 U.S.C. Sections 8621 through 8630 shall not be deposited in the fund without the written approval of the appropriate federal agency and the New Mexico mortgage finance authority. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative.

B. Money in the fund is subject to appropriation by the legislature to the department to carry out the purposes of the Community Energy Efficiency Development Block Grant Act, including the administrative costs of the department; provided that money in the fund that is derived from the federal government may be expended by the department without legislative authorization for any purpose that is consistent with the goal of reducing the energy burden of low-income persons or underserved communities as otherwise allowed by law, including carrying out the community energy efficiency development block grant program and the administrative costs of the department.

History: Laws 2022, ch. 10, § 7.

Cross references. — For the federal low-income home energy assistance program *see* 42 U.S.C.

Effective dates. — Laws 2022, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

ARTICLE 18

Energy Transition

Sec.	Sec.
62-18-1. Short title.	62-18-13. Security interests; creation of security interest; priority over other liens; attachment on filing with secretary of state.
62-18-2. Definitions.	62-18-14. Sale of energy transition property; perfecting interests; absolute transfer and true sale requirements.
62-18-3. Location of resource development after abandonment.	62-18-15. Fee assessments.
62-18-4. Financing order; application contents; pending applications.	62-18-16. Energy transition Indian affairs fund; energy transition economic development assistance fund; energy transition displaced worker assistance fund; community advisory committee.
62-18-5. Financing order; issuance; terms of bonds; reports to commission of disbursement of bond proceeds; review and audit of records.	62-18-17. Energy transition bonds not public debt.
62-18-6. Adjustment mechanism; adjustment procedures; hearing procedures if commission determines adjustment made in error.	62-18-18. Energy transition bonds as legal investments.
62-18-7. Financing order; irrevocability; amendments.	62-18-19. State pledge not to impair.
62-18-8. Aggrieved parties; request for rehearing; judicial review.	62-18-20. Choice of law.
62-18-9. Conditions that keep financing orders in effect and energy transition charges imposed.	62-18-21. Conflicts.
62-18-10. Qualifying utility duties.	62-18-22. Validity on actions if act held invalid.
62-18-11. Commission treatment of energy transition bonds.	62-18-23. Applicability.
62-18-12. Energy transition property; energy transition revenues.	

62-18-1. Short title.

Sections 1 through 23 [62-18-1 through 62-18-23 NMSA 1978] of this act may be cited as the "Energy Transition Act".

History: Laws 2019, ch. 65, § 1.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-2. Definitions.

As used in the Energy Transition Act:

A. "adjustment mechanism" means a formula-based calculation used to make adjustments to the energy transition charges that are necessary to correct for any over-collection or

under-collection of the energy transition charges, to provide for the timely and complete payment of scheduled principal and interest on energy transition bonds and the payment and recovery of other financing costs in accordance with a financing order;

B. "ancillary agreement" means a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement or other similar agreement or arrangement entered into in connection with the issuance of an energy transition bond that is designed to promote the credit quality and marketability of the bond or to mitigate the risk of an increase in interest rates;

C. "assignee" means a person or legal entity, that may be newly created by the qualifying utility, to which an interest in energy transition property is sold, assigned, transferred or conveyed, other than as security, and any successor to or subsequent assignee of such a person or legal entity;

D. "commission" means the public regulation commission;

E. "electric delivery service" means transmission, distribution, generation, energy or any other service from a qualifying utility pursuant to commission-approved rate schedules or special contracts;

F. "energy transition bond" means a bond or other evidence of indebtedness or ownership that is issued by a qualifying utility or an assignee pursuant to a financing order, the proceeds of which are secured by or payable from energy transition property and that are non-recourse to the qualifying utility;

G. "energy transition charge" means a non-bypassable charge paid by all customers of a qualifying utility for the recovery of energy transition costs;

H. "energy transition cost" means the sum of:

(1) financing costs;

(2) abandonment costs, which for a qualifying generating facility shall not exceed the lower of three hundred seventy-five million dollars (\$375,000,000) or one hundred fifty percent of the undepreciated investment in a qualifying generating facility being abandoned, as of the date of the abandonment. The abandonment costs subject to this limitation shall include:

(a) up to thirty million dollars (\$30,000,000) per qualifying generating facility in costs not previously collected from the qualifying utility's customers for plant decommissioning and mine reclamation costs, subject to any limitations ordered by the commission prior to January 1, 2019 and affirmed by the New Mexico supreme court prior to the effective date of the Energy Transition Act, associated with the abandoned qualifying generating facility;

(b) up to twenty million dollars (\$20,000,000) per qualifying generating facility in costs for severance and job training for employees losing their jobs as a result of an abandoned qualifying generating facility and any associated mine that only services the abandoned qualifying generating facility;

(c) undepreciated investments as of the date of abandonment on the qualifying utility's books and records in a qualifying generating facility that were either being recovered in rates as of January 1, 2019 or are otherwise found to be recoverable through a court decision; and

(d) other undepreciated investments in a qualifying generating facility incurred to comply with law, whether established by statute, court decision or rule, or necessary to maintain the safe and reliable operation of the qualifying generating facility prior to the facility's abandonment;

(3) any other costs required to comply with changes in law enacted after January 1, 2019 incurred by the qualifying utility at the qualifying generating facility; and

(4) payments required pursuant to Section 16 [62-18-16 NMSA 1978] of the Energy Transition Act;

I. "energy transition property" means the rights and interests of a qualifying utility or an assignee under a financing order, including the right to impose, charge, collect and receive energy transition charges in an amount necessary to provide for full payment and recovery of all energy transition costs identified in the financing order, including all revenues or other proceeds arising from those rights and interests;

J. "energy transition revenues" means revenues collected by or on behalf of a qualifying utility through an energy transition charge;

K. "financing cost" means the cost incurred by the qualifying utility or an assignee to issue and administer energy transition bonds, including:

(1) payment of the fee authorized pursuant to Subsection L of Section 5 [62-18-5 NMSA 1978] of the Energy Transition Act;

(2) principal, interest, acquisition, defeasance and redemption premiums that are payable on energy transition bonds;

(3) any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the energy transition bonds;

(4) any costs, fees and expenses related to issuing, supporting, repaying, servicing and refunding energy transition bonds, the application for a financing order, including related state board of finance expenses, or obtaining an order approving abandonment of a qualifying generating facility;

(5) any costs, fees and related expenses incurred relating to any existing secured or unsecured obligation of a qualifying utility or an affiliate of a qualifying utility that are necessary to obtain any consent, release, waiver or approval from any holder of such an obligation to permit a qualifying utility to issue or cause the issuance of energy transition bonds;

(6) any taxes, fees, charges or other assessments imposed on energy transition bonds;

(7) preliminary and continuing costs associated with subsequent financing; and

(8) any other related costs approved for recovery in the financing order;

L. "financing order" means an order of the commission that authorizes the issuance of energy transition bonds, authorizes the imposition, collection and periodic adjustments of the energy transition charge and creates energy transition property;

M. "financing party" means a trustee, collateral agent or other person acting for the benefit of a bondholder, and a party to an ancillary agreement or the energy transition bonds, the rights and obligations of which relate to or depend upon the existence of energy transition property, the enforcement and priority of a security interest in energy transition property or the timely collection and payment of energy transition revenues;

N. "lowest cost objective" means that the structuring, marketing and pricing of energy transition bonds results in the lowest energy transition charges consistent with prevailing market conditions at the time of pricing of energy transition bonds and the structure and terms of energy transition bonds approved pursuant to the financing order;

O. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;

P. "non-bypassable" means that the payment of an energy transition charge may not be avoided by an electric service customer located within a utility service area and shall be paid by the customer that receives electric delivery service from the qualifying utility imposing the charge for as long as the energy transition bonds secured by the charge are outstanding and the related financing costs have not been recovered in full;

Q. "non-utility affiliate" means, with respect to a qualifying utility, a person that is an affiliated interest, as that term is used in the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978], but a "non-utility affiliate" does not include a public utility that provides retail utility service to customers in the state;

R. "public utility" means "public utility" as used in the Public Utility Act, but "public utility" does not include a distribution cooperative utility organized pursuant to the Rural Electric Cooperative Act [Chapter 62, Article 15 NMSA 1978];

S. "qualifying generating facility" means a coal-fired generating facility in New Mexico that may be composed of multiple generating units that:

(1) has been granted a certificate of public convenience and for which abandonment authority is granted after December 31, 2018;

(2) is owned or leased, in whole or in part, by a qualifying utility;

(3) if operated by a qualifying utility prior to the effective date of the Energy Transition Act, is to be abandoned prior to January 1, 2023; and

(4) if not operated by a qualifying utility prior to the effective date of the Energy Transition Act, is to be abandoned prior to January 1, 2032; and

T. "qualifying utility" means a public utility that meets the requirements of Paragraph (1) of Subsection G of Section 62-3-3 NMSA 1978 and owns or leases all or a portion of a qualifying generating facility and its successor or assignees.

History: Laws 2019, ch. 65, § 2. **Effective dates.** — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-3. Location of resource development after abandonment.

A. For a qualifying utility that abandons a qualifying generating facility in New Mexico prior to January 1, 2023, the qualifying utility shall, no later than one year after approval of the abandonment, apply for commission approval of competitively procured replacement resources. As part of that competitive procurement, and in addition to the criteria set forth in Subsections B and C of this section, projects shall be ranked based on their cost, economic development opportunity and ability to provide jobs with comparable pay and benefits to those lost due to the abandonment of a qualifying generating facility. The qualitative and quantitative data and analysis used to establish the ranking shall be available for review by parties to the commission proceeding.

B. In determining whether to approve replacement resources, the commission shall prefer resources with the least environmental impacts, those with higher ratios of capital costs to fuel costs and those able to reduce the cost of reclamation and use for lands previously mined within the county of the qualifying generating facility.

C. In considering responses to requests for proposals for replacement resources pursuant to this section, a qualifying utility shall inform prospective bidders that it promotes and encourages the use of workers residing in New Mexico to the greatest extent practicable and shall take that use into consideration in evaluating proposals.

D. The commission shall grant all necessary approvals for replacement resources; provided that the commission may determine that the particular resource proposed by the qualifying utility should not be approved and that, instead, an alternative replacement resource that meets the conditions of this section should be approved. The commission shall not disallow recovery of reasonable costs associated with requirements as to where the resources are located.

E. Replacement resources shall be subject to local property taxes or a binding commitment to make an equivalent payment in lieu of taxes.

F. As used in this section, "replacement resources" means up to four hundred fifty megawatts of nameplate capacity identified by the qualifying utility as replacement for a qualifying generating facility, and may include energy storage capacity; provided that such resources are located in the school district in New Mexico where the abandoned facility is located, are necessary to maintain reliable service and are in the public interest as determined by the commission.

History: Laws 2019, ch. 65, § 3. **Effective dates.** — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-4. Financing order; application contents; pending applications.

A. A qualifying utility that is abandoning a qualifying generating facility may apply to the commission for a financing order pursuant to this section to recover all of its energy transition costs through the issuance of energy transition bonds. To obtain a financing order, a qualifying utility shall obtain approval to abandon a qualifying generating facility pursuant to Section 62-9-5 NMSA 1978. The application for the financing order may be filed as part of the application for approval to abandon a qualifying generating facility.

B. An application for a financing order shall include:

- (1) a description of the facility that the qualifying utility proposes to abandon or for which abandonment authority was granted after December 31, 2018;
- (2) an estimate of the energy transition costs and shall:

(a) identify the severance pay and job training expenses for affected employees losing their jobs as a result of an abandoned qualifying generating facility and any associated mine that only services the abandoned qualifying generating facility;

(b) identify costs not previously collected from the qualifying utility's customers for plant decommissioning and mine reclamation costs, subject to any limitations ordered by the commission prior to January 1, 2019 and affirmed by the New Mexico supreme court prior to the effective date of the Energy Transition Act, associated with the abandoned qualifying generating facility; and

(c) include an estimate of the financing costs associated with each series of energy transition bonds proposed to be issued;

(3) an estimate of the amount of energy transition charges necessary to recover the costs in Paragraph (2) of this subsection and the proposed calculation thereof, based on the estimated date of issuance and estimated principal amount of each series of energy transition bonds proposed to be issued;

(4) a description of the proposed adjustment mechanism that complies with the provisions of Section 6 [62-18-6 NMSA 1978] of the Energy Transition Act;

(5) a memorandum with supporting exhibits from a securities firm, such firm to be attested to by the state board of finance as being experienced in the marketing of bonds and capable of providing such a memorandum, that the proposed issuance satisfies the current published AAA rating or equivalent rating criteria of at least one nationally recognized statistical rating organization for issuances similar to the proposed energy transition bonds. The request for such attestation may be made by a qualifying utility prior to an application for a financing order, and the state board of finance shall act upon such a request promptly;

(6) a commitment by the qualifying utility to file with the commission following the issuance of the energy transition bonds:

(a) a description of the final structure and pricing of the bonds;

(b) updated financing costs and payment amount required pursuant to Section 16 [62-18-16 NMSA 1978] of the Energy Transition Act; and

(c) an updated calculation of the energy transition charges;

(7) an estimate of timing of the issuance and term of the energy transition bonds, or series of bonds; provided that the scheduled final maturity for each bond issuance shall be no longer than twenty-five years;

(8) identification of plans to sell, assign, transfer or convey, other than as a security, interest in energy transition property, including identification of an assignee, and demonstration that the assignee will be a financing entity wholly owned, directly or indirectly, by the qualifying utility that will be initially capitalized by the qualifying utility in such a way that equity interests in the financing entity are at least one-half percent of the total capital of the assignee;

(9) identification of ancillary agreements that may be necessary or appropriate;

(10) a description of a proposed ratemaking process to reconcile and recover or refund any difference between the energy transition costs financed by the energy transition bonds and the actual final energy transition costs incurred by the qualifying utility or the assignee;

(11) a proposed ratemaking method to account for the reduction in the qualifying utility's cost of service associated with the amount of undepreciated investments being recovered by the energy transition charge at the time that charge becomes effective; and

(12) a statement from the qualifying utility committing that the qualifying utility will use commercially reasonable efforts to obtain the lowest cost objective.

C. The application may include requests for approvals for new resources necessitated by the abandonment of a qualifying generating facility.

D. The qualifying utility or the commission may defer applications for needed approvals for new resources to a separate proceeding; provided that the application identifies adequate potential new resources sufficient to provide reasonable and proper service to retail customers.

E. If an application for approval to abandon a qualifying generating facility is pending before the commission on the effective date of the Energy Transition Act, the qualifying utility may file a separate application for a financing order, and the commission may join or consolidate the application for a financing order with the pending proceeding involving abandonment of the qualifying generating facility, with the consent of the applicant. On such joinder or consolidation, the time

periods prescribed by the Energy Transition Act shall become applicable to the joined or consolidated case as of the date of the joinder or consolidation.

F. If a qualifying utility does not recover energy transition costs pursuant to the Energy Transition Act, the energy transition costs may be recovered pursuant to other applicable provisions of the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978].

History: Laws 2019, ch. 65, § 4.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ANNOTATIONS

The Energy Transition Act does not violate procedural due process. — Where the public regulation commission (Commission) gave leave for the public service company of New Mexico to issue energy transition bonds of up to \$361,000,000 in connection with the abandonment of its interests in the San Juan generating station units one and four and to collect separate and non-bypassable energy transition charges from its customers in repayment of the bonds, pursuant to the Energy Transition Act (ETA), §§ 62-18-1 through 62-18-23 NMSA 1978, and where appellants, two organizations that represent energy consumers, claimed that the ETA deprives energy consumers of procedural due process by allowing a qualified public utility to recover its energy transition costs without Commission oversight, appellants procedural due process was without merit, because the ETA as written contemplates that energy consumers will be given sufficient notice of the utility's application and a meaningful opportunity to be heard upon lodging a protest establishing good cause for a formal hearing in front of the Commission. *Citizens for Fair Rates & the Env't v. NMPRC*, 2022-NMSC-010.

The Energy Transition Act does not violate substantive due process. — Where the public regulation commission (Commission) gave leave for the public service company of New Mexico to issue energy transition bonds of up to \$361,000,000 in connection with the abandonment of its interests in the San Juan generating station units one and four and to collect separate and non-bypassable energy transition charges from its customers in repayment of the bonds, pursuant to the Energy Transition

Act (ETA), §§ 62-18-1 through 62-18-23 NMSA 1978, and where appellants, two organizations that represent energy consumers, claimed that the ETA does not permit the Commission to review a utility's estimated energy transition costs before issuing a financing order, and that this limitation on the Commission's authority violates substantive due process protections, appellants substantive due process challenge failed, because under the modified rational basis standard, appellants have not brought forth sufficient record evidence, legislative facts, judicially noticeable materials, case law, or legal argument to establish that the ETA lacks a rational relationship to the interests expressed in § 62-3-1(B) NMSA 1978. *Citizens for Fair Rates & the Env't v. NMPRC*, 2022-NMSC-010.

Appellants failed to demonstrate that the public regulation commission did not comply with statutory requirement. — Where the public regulation commission (Commission) gave leave for the public service company of New Mexico (PNM) to issue energy transition bonds of up to \$361,000,000 in connection with the abandonment of its interests in the San Juan generating station units one and four and to collect separate and non-bypassable energy transition charges from its customers in repayment of the bonds, pursuant to the Energy Transition Act (ETA), §§ 62-18-1 through 62-18-23 NMSA 1978, and where appellants, two organizations that represent energy consumers, challenged the Commission's finding that PNM provided a memorandum from a securities firm that the proposed issuance satisfies the current published AAA rating as required by Subsection 62-18-4(B)(5), the Commission's finding was not in error because the Commission reasonably found that the senior advisor possessed actual or apparent authority to speak on behalf of the securities firm, based on the senior advisor's testimony that he was authorized to represent the securities firm in the proceedings and that he was acting within the scope of his authority. *Citizens for Fair Rates & the Env't v. NMPRC*, 2022-NMSC-010.

62-18-5. Financing order; issuance; terms of bonds; reports to commission of disbursement of bond proceeds; review and audit of records.

A. The commission may approve an application for a financing order without a formal hearing if no protest establishing good cause for a formal hearing is filed within thirty days of the date when notice is given of the filing of the application for the financing order. If a hearing is held, the commission shall issue an order granting or denying the application for the financing order to a qualifying utility that is abandoning a qualifying generating facility and an order on an accompanying application of the qualifying utility for approval to abandon the qualifying generating facility within six months from the date the application for the financing order is filed with the commission. For good cause shown, the commission may extend the time for issuing the order for an additional three months.

B. Failure to issue an order approving the application or advising of the application's non-compliance pursuant to Subsection E of this section within the time prescribed by Subsection A of this section shall be deemed approval of the application for a financing order and approval to abandon the qualifying generating facility, if abandonment approval was requested as part of the application for the financing order pursuant to this subsection. The commission shall issue an order acknowledging the deemed approvals within seven days of the expiration of the time period described in Subsection A of this section.

C. If an application for a financing order is accompanied by a request for approval of new resources, this section provides an alternative time frame to that provided in Subsection C of Section 62-9-1 NMSA 1978, and the time frame specified in this section shall govern, unless the request has been deferred to a separate proceeding pursuant to Subsection D of Section 4 [62-18-4 NMSA 1978] of the Energy Transition Act.

D. The issuance of a financing order shall be the only approval required for the authority granted in the financing order.

E. The commission shall issue a financing order approving the application if the commission finds that the qualifying utility's application for the financing order complies with the requirements of Section 4 of the Energy Transition Act. If the commission finds that a qualifying utility's application does not comply with Section 4 of the Energy Transition Act, the commission shall advise the qualifying utility of any changes necessary to comply with that section and provide the applicant an opportunity to amend the application to make such changes. Upon those changes being made, the commission shall issue a financing order approving the application.

F. A financing order shall include the following provisions:

(1) approval for the qualifying utility or assignee to issue energy transition bonds as requested in the application, to use energy transition bonds to finance the maximum amount of the energy transition costs as requested in the application, as may be adjusted pursuant to Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act, and to use the proceeds provided in Subsection A of Section 10 [62-18-10 NMSA 1978] of the Energy Transition Act;

(2) approval for the qualifying utility to recover the energy transition costs, as may be adjusted pursuant to Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act, requested in the application through energy transition charges;

(3) approval of the energy transition charges necessary to recover the authorized energy transition costs, to be imposed through a non-bypassable energy transition charge as a separate line item on the qualifying utility's customer bills, assessed consistent with energy and demand cost allocations within each customer class, subject to update pursuant to the notice filing contemplated by Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act and subject to the application of the adjustment mechanism as provided in Section 6 [62-18-6 NMSA 1978] of the Energy Transition Act, until the energy transition bonds issued pursuant to the financing order and the financing costs related to those bonds are paid in full;

(4) approval of the adjustment mechanism in compliance with Section 6 of the Energy Transition Act;

(5) a description of the energy transition property that is created by the financing order that may be used to pay, and secure the payment of, the energy transition bonds and financing costs authorized to be issued in the financing order;

(6) approval to enter into necessary or appropriate ancillary agreements;

(7) approval of any plans for selling, assigning, transferring or conveying, other than as a security, an interest in energy transition property; and

(8) approval of the proposed ratemaking process and method included in the application pursuant to Paragraphs (10) and (11) of Subsection B of Section 4 of the Energy Transition Act.

G. A financing order shall provide that the creation of energy transition property shall be simultaneous with the sale of the energy transition property to an assignee as provided in the application and the pledge of the energy transition property to secure energy transition bonds.

H. A financing order shall authorize the qualifying utility to issue one or more series of energy transition bonds for a scheduled final maturity of no more than twenty-five years for each series; provided that a rated final maturity may exceed twenty-five years. With such authorization, the qualifying utility shall not subsequently be required to secure a separate financing order prior to each issuance.

I. The commission may require, as a condition of the financing order and in every circumstance subject to the limitations set forth in Subsection A of Section 7 [62-18-7 NMSA 1978] of the Energy Transition Act, that, during any period in which energy transition bonds issued pursuant to the financing order are outstanding, an assignee that is a non-utility affiliate and issues energy transition bonds shall provide in the affiliate's articles of incorporation, partnership agreement or operating agreement, as applicable, that in order for a person to file a voluntary bankruptcy petition

on behalf of that assignee, the prior unanimous consent of the directors, partners, managers or members, as applicable, shall be required. Any such provision shall constitute a legal, valid and binding agreement of such shareholders, partners or members of the assignee and is enforceable against such shareholders, partners or members.

J. A financing order may require the qualifying utility to file with the commission a periodic report showing the receipt and disbursement of proceeds of energy transition bonds and any other documents necessary for the qualifying utility to implement the financing order. Upon issuance of the energy transition bonds, the qualifying utility shall file an advice notice with the commission, subject to review by the commission for errors and corrections, that identifies the actual energy transition charges to be included on customers' bills, effective fifteen days from the date the advice notice is filed.

K. A financing order may authorize the commission to review and audit the books and records of the qualifying utility and of an assignee that is a non-utility affiliate and issues energy transition bonds, relating to energy transition property and the receipt and disbursement of proceeds of energy transition bonds.

L. After review and approval by the department of finance and administration with regard to reasonableness of contracts for services, a financing order may authorize the commission to impose a fee on the qualifying utility to pay commission expenses for contract bond counsel accredited by a nationally recognized association of bond lawyers to provide advice and assistance to commission staff in reviewing an application for a financing order and the structure and marketing of the proposed energy transition bonds.

M. The provisions of this section shall not be construed to limit the authority of the commission to:

- (1) investigate the practices of or to audit the books and records of a qualifying utility; or
- (2) issue such further orders as may be necessary to effectuate the provisions of the Energy Transition Act.

History: Laws 2019, ch. 65, § 5.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ANNOTATIONS

The Energy Transition Act does not violate procedural due process. — Where the public regulation commission (Commission) gave leave for the public service company of New Mexico to issue energy transition bonds of up to \$361,000,000 in connection with the abandonment of its interests in the San Juan generating station units one and four and to collect separate and non-bypassable energy transition charges from its customers in repayment of the bonds, pursuant to the Energy Transition Act (ETA), §§ 62-18-1 through 62-18-23 NMSA 1978, and where appellants, two organizations that represent energy consumers, claimed that the ETA deprives energy consumers of procedural due process by allowing a qualified public utility to recover its energy transition costs without Commission oversight, appellants procedural due process was without merit, because the ETA as written contemplates that energy consumers will be given sufficient notice of the utility's application and a meaningful opportunity to be heard upon lodging a protest establishing good cause for a formal hearing in front

of the Commission. *Citizens for Fair Rates & the Env't v. NMPRC*, 2022-NMSC-010.

The Energy Transition Act does not violate substantive due process. — Where the public regulation commission (Commission) gave leave for the public service company of New Mexico to issue energy transition bonds of up to \$361,000,000 in connection with the abandonment of its interests in the San Juan generating station units one and four and to collect separate and non-bypassable energy transition charges from its customers in repayment of the bonds, pursuant to the Energy Transition Act (ETA), §§ 62-18-1 through 62-18-23 NMSA 1978, and where appellants, two organizations that represent energy consumers, claimed that the ETA does not permit the Commission to review a utility's estimated energy transition costs before issuing a financing order, and that this limitation on the Commission's authority violates substantive due process protections, appellants substantive due process challenge failed, because under the modified rational basis standard, appellants have not brought forth sufficient record evidence, legislative facts, judicially noticeable materials, case law, or legal argument to establish that the ETA lacks a rational relationship to the interests expressed in § 62-3-1(B) NMSA 1978. *Citizens for Fair Rates & the Env't v. NMPRC*, 2022-NMSC-010.

62-18-6. Adjustment mechanism; adjustment procedures; hearing procedures if commission determines adjustment made in error.

A. If the commission issues a financing order, the qualifying utility for which the order is issued may charge all of the qualifying utility's customers an energy transition charge, which shall be allocated to customer classes consistent with the production cost allocation methodology

established by the commission in the qualifying utility's most recent general rate case. Energy transition charges shall be assessed consistent with the production cost allocation methodology and the determination of energy and demand costs within each customer class, both of which shall be subject to the adjustment mechanism.

B. The commission shall periodically approve adjustments of the energy transition charges pursuant to the adjustment mechanism approved in the financing order to correct for any over-collection or under-collection of the energy transition charge and to provide for timely payment of scheduled principal of and interest on the energy transition bonds and the payment and recovery of financing costs in accordance with the financing order. Except as provided in Subsection C of this section, the qualifying utility shall file at least semiannually, or more frequently as provided in the financing order:

(1) a calculation estimating whether the existing energy transition charge is sufficient to provide for timely payment of scheduled principal of and interest on the energy transition bonds and the payment and recovery of other financing costs in accordance with the financing order or if either an over-collection or under-collection is projected; and

(2) a calculation showing the adjustment to the energy transition charge to correct for any over-collection or under-collection of energy transition charges.

C. The qualifying utility shall file the calculations described in Subsection B of this section at least quarterly during the two-year period preceding the final maturity date of the energy transition bonds.

D. The adjustment mechanism shall remain in effect until the energy transition bonds and all financing costs have been fully paid and recovered, any under-collection is recovered from customers and any over-collection is returned to customers.

E. On the same day the qualifying utility files with the commission its calculation of the adjustment to the energy transition charge, the qualifying utility shall cause notice of the filing to be given to the parties of record in the case in which the financing order was issued.

F. An adjustment to the energy transition charge filed by the qualifying utility shall be deemed approved without hearing thirty days after filing the adjustment unless:

(1) no later than twenty days from the date the qualifying utility filed the calculation of the adjustment, the commission is notified of a potential mathematical or transcription error in the adjustment; provided that the notice identifies the error with specificity; and

(2) the commission determines that the calculation of the adjustment is unlikely to provide for timely payment, or is likely to result in a material overpayment, of scheduled principal of and interest on the energy transition bonds and the payment and recovery of other financing costs in accordance with the financing order and, based on that determination, suspends operation of the adjustment, pending a hearing limited to the issue of the error in the adjustment; provided that the suspension shall be for a period not to exceed sixty days from the date the qualifying utility filed the calculation of the adjustment.

G. If the commission determines that a hearing is necessary, the commission shall hold a hearing on the proposed adjustment that shall be limited to determining whether there is a mathematical or transcription error in the calculation of the adjustment. If, after a hearing, the commission determines that the calculation of the adjustment contains a mathematical or transcription error, the commission shall issue an order that rejects and corrects the adjustment. The qualifying utility shall adjust the energy transition charge in accordance with the commission's calculation within five days from issuance of the order. If the commission does not issue an order rejecting the adjustment with a determination of the corrected calculation within sixty days from the date the qualifying utility filed the adjustment, the adjustment to the energy transition charge shall be deemed approved.

H. No adjustment pursuant to this section, and no proceeding held pursuant to this section, shall affect the irrevocability of the financing order pursuant to Section 7 [62-18-7 NMSA 1978] of the Energy Transition Act.

History: Laws 2019, ch. 65, § 6.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019; 90 days after the adjournment of the legislature.

62-18-7. Financing order; irrevocability; amendments.

A. A financing order is irrevocable and the commission shall not reduce, impair, postpone or terminate the energy transition charges approved in the financing order, the energy transition property or the collection or recovery of energy transition revenues.

B. Subject to the limitation provided in Subsection A of this section, a financing order may be amended at the request of the qualifying utility to commence a proceeding and issue an amended financing order that:

(1) provides for refinancing, retiring or refunding all or a portion of an outstanding series of energy transition bonds issued pursuant to the original financing order; provided that the commission includes in the amended financing order the findings and requirements specified in Section 5 [62-18-5 NMSA 1978] of the Energy Transition Act; or

(2) adjusts the amount of energy transition costs to be financed by energy transition bonds that have not yet been issued to reflect updated estimated or actual costs that differ from costs estimated at the time of the initial financing order or to correct any errors.

C. The commission shall issue an order granting or denying the proposed amended financing order within thirty days of the filing of the request by the qualifying utility. No change in the credit rating of a qualifying utility from the credit rating at the time of issuance of a financing order shall impair the irrevocability of a financing order.

History: Laws 2019, ch. 65, § 7.

IV, § 23, was effective June 14, 2019, 90 days after the

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

adjournment of the legislature.

62-18-8. Aggrieved parties; request for rehearing; judicial review.

A. A financing order shall be issued as a separate order from any other order issued by the commission on a requested approval in the application proceeding and is a final order of the commission. A party aggrieved by the issuance of a financing order may apply to the commission for a rehearing in accordance with Section 62-10-16 NMSA 1978; provided that such application shall be due no later than ten calendar days after issuance of the financing order. An application for rehearing shall be deemed denied if not acted upon by the commission within ten calendar days after the filing of the application.

B. An aggrieved party may file a notice of appeal with the supreme court in accordance with Section 62-11-1 NMSA 1978; provided that such notice shall be due no later than ten calendar days after denial of an application for rehearing or, if rehearing is not applied for, no later than ten calendar days after issuance of the financing order. The supreme court shall proceed to hear and determine the appeal as expeditiously as practicable.

History: Laws 2019, ch. 65, § 8.

IV, § 23, was effective June 14, 2019, 90 days after the

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

adjournment of the legislature.

62-18-9. Conditions that keep financing orders in effect and energy transition charges imposed.

A. A financing order shall remain in effect until the energy transition bonds issued pursuant to the financing order and any related financing costs have been paid in full.

B. A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility or any non-utility affiliate or the commencement of any proceeding for bankruptcy or appointment of a receiver.

C. If energy transition bonds issued pursuant to a financing order are outstanding and the related energy transition costs have not been paid in full, the energy transition charges authorized by the financing order shall be collected by the qualifying utility or its successors or assignees, or a collection agent, in full through a non-bypassable charge that is a separate line item on

customer bills and not a part of the qualifying utility's base rates. The charge shall be paid by all customers:

- (1) receiving electric delivery service from the qualifying utility under commission-approved rate schedules or special contracts; and
- (2) who acquire electricity from an alternative or subsequent electricity supplier in the utility service area, to the extent that such acquisition is permitted by New Mexico law.

History: Laws 2019, ch. 65, § 9.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-10. Qualifying utility duties.

A. Except as provided in Section 16 [62-18-16 NMSA 1978] of the Energy Transition Act, a qualifying utility that is abandoning a qualifying generating facility shall use the proceeds of the issuance of energy transition bonds only for purposes related to providing utility service to customers and to pay financing costs.

B. Energy transition revenues shall be applied solely to the repayment of energy transition bonds and the ongoing financing costs.

C. The failure of a qualifying utility to comply with any provision of the Energy Transition Act shall not invalidate, impair or affect a financing order, energy transition property, energy transition charge or energy transition bonds and financing costs. Payments to bondholders or financing parties on the energy transition bonds shall be made on a quarterly or semiannual basis pursuant to the terms of the energy transition bonds.

D. For a qualifying utility that receives approval of a financing order and issues sources of energy transition bonds, the qualifying utility's generation and sources of energy procured pursuant to power purchase agreements with a term of twenty-four months or longer, and that are dedicated to serve the qualifying utility's retail customers, shall not emit, on average, more than four hundred pounds of carbon dioxide per megawatt-hour by January 1, 2023, and not more than two hundred pounds of carbon dioxide per megawatt-hour by January 1, 2032 and thereafter. Compliance shall be measured and verified every three years with the first period commencing on January 1, 2023. The commission shall adopt rules to implement the requirements of this subsection.

History: Laws 2019, ch. 65, § 10.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-11. Commission treatment of energy transition bonds.

A. If the commission issues a financing order, the commission shall not treat:

- (1) energy transition bonds issued pursuant to the financing order as debt of the qualifying utility;
- (2) the energy transition charges paid under the financing order as revenue of the qualifying utility; or
- (3) the energy transition costs to be financed by energy transition bonds as costs of the qualifying utility.

B. Reasonable actions taken by a qualifying utility to comply with the financing order shall be deemed to be just and reasonable for ratemaking purposes. Nothing in the Energy Transition Act shall:

- (1) prevent or preclude the commission from investigating the compliance of a qualifying utility with the terms and conditions of a financing order and requiring compliance therewith;
- (2) prevent or preclude the commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing order or the requirements of the Energy Transition Act;

(3) affect the authority of the commission to apply the adjustment mechanism as provided in Section 6 [62-18-6 NMSA 1978] of the Energy Transition Act; or

(4) prevent or preclude the commission from including the qualifying utility's acquisition of replacement power resources in the qualifying utility's cost of service.

C. The commission shall not order or require a qualifying utility to issue energy transition bonds to finance any costs associated with abandonment of a qualifying generating facility. A utility's decision not to issue energy transition bonds shall not be a basis for the commission to refuse to allow a qualifying utility to recover energy transition costs in an otherwise permissible fashion, or as a basis to refuse or condition authorization to issue securities pursuant to Sections 62-6-6 and 62-6-7 NMSA 1978.

History: Laws 2019, ch. 65, § 11.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-12. Energy transition property; energy transition revenues.

A. Energy transition property that is created in a financing order shall constitute an existing, present property right, notwithstanding that the imposition and collection of energy transition charges depend on the qualifying utility continuing to provide electric energy or continuing to perform its service functions relating to the collection of energy transition charges or on the level of future energy consumption. Energy transition property shall exist whether or not the energy transition revenues have been billed, have accrued or have been collected and notwithstanding that the value or amount of the energy transition property is dependent on the future provision of electric energy or service to customers by the qualifying utility.

B. All energy transition property created in a financing order shall continue to exist until the energy transition bonds issued and all related financing costs pursuant to a financing order are paid in full.

C. All or any portion of energy transition property created in a financing order may be transferred, sold, conveyed or assigned to a non-utility affiliate that is:

(1) wholly owned, directly or indirectly, by the qualifying utility; and

(2) created for the limited purposes of acquiring, owning or administering energy transition property or issuing energy transition bonds under the financing order.

D. All or any portion of energy transition property may be pledged to secure the payment of energy transition bonds and all financing costs.

E. The formation by a qualifying utility of a non-utility affiliate for the purposes of acquiring, owning or administering energy transition property, issuing energy transition bonds pursuant to a financing order and transacting a transfer, sale, conveyance, assignment, grant of a security interest in or pledge of energy transition property by a qualifying utility to a non-utility affiliate, to the extent previously authorized in a financing order, does not require any further approval of the commission and shall not be subject to the rules of the commission regarding Class I transactions and Class II transactions, as defined by Section 62-3-3 NMSA 1978, except that the commission may examine the books and records of the non-utility affiliate.

F. If a qualifying utility defaults on any required payment of energy transition bonds, a court with jurisdiction in the matter, on application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the energy transition revenues for the benefit of bondholders, any assignees or financing parties. The order shall remain in full force and effect notwithstanding any bankruptcy, reorganization or other insolvency or receivership proceedings with respect to the qualifying utility or any non-utility affiliate.

G. Energy transition property, energy transition revenues and the interests of an assignee, bondholder or financing party in energy transition property and energy transition revenues are not subject to set-off, counterclaim, surcharge or defense by the qualifying utility or any other person or in connection with the bankruptcy, reorganization or other insolvency or receivership proceeding of the qualifying utility, non-utility affiliate or any other entity.

H. Any successor to a qualifying utility shall be bound by the requirements of the Energy Transition Act and shall perform and satisfy all obligations of, and have the same rights under a financing order as, the qualifying utility under the financing order in the same manner and to the same extent as the qualifying utility, including the obligation to collect and pay energy transition revenues to persons entitled to receive the revenues.

History: Laws 2019, ch. 65, § 12.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-13. Security interests; creation of security interest; priority over other liens; attachment on filing with secretary of state.

A. Except as otherwise provided in this section, the creation, perfection and enforcement of a security interest in energy transition property to secure the repayment of the principal of and interest on energy transition bonds, amounts payable pursuant to an ancillary agreement and other financing costs are governed by this section. This section shall be deemed to supersede the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978] and Chapter 62, Article 13 NMSA 1978, to the extent those provisions are inconsistent with this section.

B. The description or reference to energy transition property in a transfer or security agreement and a financing statement is sufficient only if the description or reference refers to the Energy Transition Act and the financing order creating the energy transition property. This section applies to all purported transfers of, grants of liens on or security interests in, energy transition property.

C. A security interest in energy transition property is created, valid and binding at the latest of when:

- (1) the financing order is issued;
- (2) a security agreement is executed and delivered; or
- (3) value is received for the energy transition bonds.

D. The security interest attaches without any physical delivery of collateral or other act and the lien of the security interest shall be valid, binding and perfected against all parties having claims of any kind against the person granting the security interest, regardless of whether such parties have notice of the lien, on the filing of a financing statement with the secretary of state. The secretary of state shall maintain the financing statement in the same manner and in the same recordkeeping system maintained for financing statements filed pursuant to the Uniform Commercial Code-Secured Transactions [Chapter 55, Article 9 NMSA 1978]. Financing statements filed pursuant to this section shall be effective until a termination statement is filed.

E. A security interest in energy transition property is a continuously perfected security interest and has priority over any other lien that may subsequently attach to the energy transition property unless the holder of the security interest has agreed in writing otherwise.

F. The priority of a security interest in energy transition property is not affected by the commingling of energy transition revenues with other funds. Any pledgee or secured party shall have a perfected security interest in the amount of all energy transition revenues that are deposited in any account of the qualifying utility and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.

G. No order of the commission amending a financing order and no application of the adjustment mechanism shall affect the validity, perfection or priority of a security interest in or transfer of energy transition property.

History: Laws 2019, ch. 65, § 13.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-14. Sale of energy transition property; perfecting interests; absolute transfer and true sale requirements.

A. Any sale, assignment or transfer of energy transition property to an assignee that is a financing entity that is wholly owned, directly or indirectly, by the utility shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to and under the energy transition property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in energy transition property shall be created when:

- (1) the financing order creating the energy transition property has become effective;
- (2) the documents evidencing the transfer of energy transition property have been executed and delivered to the assignee; and
- (3) value is received.

B. On the filing of a financing statement with the secretary of state pursuant to Subsection D of Section 13 [62-18-13 NMSA 1978] of the Energy Transition Act, a transfer of an interest in energy transition property shall be perfected against all third persons, except creditors holding a prior security interest, ownership interest or assignment in the energy transition property previously perfected in accordance with Section 13 of that act.

C. The characterization of the sale, assignment or transfer as an absolute transfer and true sale, and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by:

- (1) commingling of energy transition revenues with other funds;
- (2) the retention by the seller of:
 - (a) a partial or residual interest, including an equity interest, in the energy transition property, whether direct or indirect, or whether subordinate or otherwise; or
 - (b) the right to recover costs associated with taxes or license fees imposed on the collection of energy transition revenues;
- (3) any recourse that the purchaser may have against the seller;
- (4) any indemnification rights, obligations or repurchase rights made or provided by the seller;
- (5) the obligation of the seller to collect energy transition revenues on behalf of an assignee;
- (6) the treatment of the sale, assignment or transfer of energy transition property for tax, financial reporting or other purposes;
- (7) any subsequent order of the commission amending a financing order pursuant to Subsection B of Section 7 [62-18-7 NMSA 1978] of the Energy Transition Act;
- (8) any use of an adjustment mechanism approved in the financing order; or
- (9) anything else that might affect or impair the characterization of the property.

History: Laws 2019, ch. 65, § 14.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-15. Fee assessments.

The energy transition charge stated as a separate line entry on a customer bill sent by a qualifying utility may be subject to an assessment of a franchise fee imposed by a municipality, county or other political subdivision of the state, pursuant to a utility franchise agreement. The imposition, collection and receipt of an energy transition charge is exempt from inspection and supervision fees assessed pursuant to the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978].

History: Laws 2019, ch. 65, § 15.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-16. Energy transition Indian affairs fund; energy transition economic development assistance fund; energy transition displaced worker assistance fund; community advisory committee.

A. The "energy transition Indian affairs fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

B. The Indian affairs department shall administer the energy transition Indian affairs fund, and money in the fund is subject to appropriation by the legislature only to that department to assist in addressing the conditions and issues of tribes and native peoples in the affected community.

C. The Indian affairs department shall develop an Indian affairs assistance plan to assist tribal and native people in the affected community that shall provide for the disbursement of money in the energy transition Indian affairs fund. In developing the plan, the Indian affairs department shall establish a public planning process in the affected community to inform the use of money in the fund. The Indian affairs department shall engage in consultation with Indian nations, tribes and pueblos in the affected community pursuant to the State-Tribal Collaboration Act [11-18-1 NMSA 1978]. The public planning process shall include at least three public meetings in the affected community. Expenditures from the fund shall be made after completion of the plan and as follows:

(1) to an entity approved by the Indian affairs department to receive funds for any program established at the Indian affairs department; and

(2) to tribal governments, public agencies or private persons to provide services and facilities in the affected community for promoting the welfare of Indian people.

D. The "energy transition economic development assistance fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

E. The economic development department shall administer the energy transition economic development assistance fund, and money in the fund is subject to appropriation by the legislature only to that department to assist in diversifying and promoting the affected community's economy by fostering economic development opportunities unrelated to fossil fuel development or use.

F. The economic development department shall develop an economic diversification and development plan to assist the affected community that shall provide for the disbursement of money in the energy transition economic development assistance fund. In developing the plan, the economic development department shall request recommendations from the affected community's community advisory committee pursuant to Subsection K of this section and establish a public input process in the affected community to inform the use of money in the fund. The economic development department shall engage in consultation with Indian nations, tribes and pueblos in the affected area pursuant to the State-Tribal Collaboration Act. The public input process shall include at least three public meetings in the affected community. Expenditures from the fund shall be made pursuant to the plan and as follows:

(1) to an entity approved by the economic development department to receive funds for any program established at the economic development department;

(2) to assist employers to qualify for any tax relief for hiring displaced workers established under state or federal law; and

(3) to a municipality, county, Indian nation, pueblo or tribe or land grant community in New Mexico for programs designed to promote economic development in the affected community.

G. The "energy transition displaced worker assistance fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

H. The workforce solutions department shall administer the energy transition displaced worker assistance fund, and money in the fund is subject to appropriation by the legislature only to that department to assist displaced workers in an affected community.

I. The workforce solutions department shall develop a displaced worker development plan to assist displaced workers in an affected community that shall provide for the disbursement of money in the energy transition displaced worker assistance fund. In developing the plan, the workforce solutions department shall request recommendations from the affected community's community advisory committee pursuant to Subsection K of this section and establish a public input process in the affected community to inform the use of money in the energy transition displaced worker assistance fund. The workforce solutions department shall engage in consultation with Indian nations, tribes and pueblos in the affected area pursuant to the State-Tribal Collaboration Act. The public input process shall include at least three public meetings in the affected community. Expenditures from the energy transition displaced worker assistance fund shall be made pursuant to the plan and as follows:

(1) to assist employers of displaced workers to qualify for any tax relief established under state or federal law;

(2) to the workforce solutions department:

(a) to provide assistance to displaced workers using any program established at that department; and

(b) for payment of costs associated with displaced workers enrolling and participating in certified apprenticeship programs in New Mexico; and

(3) to a municipality, county, Indian nation, pueblo or tribe or land grant community in New Mexico for job training and apprenticeship programs for displaced workers or for programs designed to promote economic development in the affected community.

J. Within thirty days of receipt of energy transition bond proceeds, a qualifying generating facility located in New Mexico shall transfer the following percentages of the financed amount of energy transition bonds as follows:

(1) one-half percent to the Indian affairs department for deposit in the energy transition Indian affairs fund;

(2) one and sixty-five hundredths percent to the economic development department for deposit in the energy transition economic development assistance fund; and

(3) three and thirty-five hundredths percent to the workforce solutions department for deposit in the energy transition displaced worker assistance fund.

K. In each affected community, a community advisory committee shall be convened. All meetings of the community advisory committee shall be held pursuant to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. The secretaries of Indian affairs, economic development and workforce solutions shall appoint three conveners who reside in the affected community, at least one from each major political party and one representing one of the Navajo Nation chapter houses in the affected community. The conveners shall appoint members of the community advisory committee to include a member from each municipality, county, Indian nation, pueblo, tribe and land grant community, if any, in the affected community, at least four appointees representing diverse economic and cultural perspectives of the affected community and one appointee representing displaced workers in the affected community. Within sixty days of a request by the economic development department pursuant to Subsection F of this section, or the workforce solutions department pursuant to Subsection I of this section, a community advisory committee shall provide recommendations to the requesting department on the use of available funds intended for the affected community.

L. As used in this section:

(1) "affected community" means a New Mexico county located within one hundred miles of a New Mexico facility producing electricity that closes, resulting in at least forty displaced workers; and

(2) "displaced worker" means a New Mexico resident who:

(a) within the previous twelve months, was terminated from employment, or whose contract was terminated, due to the abandonment of a New Mexico facility producing electricity that resulted in displacing at least forty workers;

(b) had at least seventy-five percent of the resident's net income, as that term is defined in the Income Tax Act [Chapter 7, Article 2 NMSA 1978], from the employment or contract described in Subparagraph (a) of this paragraph;

(c) has not been able to replace the lost wages described in Subparagraph (b) of this paragraph or whose annual wages are at least twenty-five percent less than when the qualifying facility was operating; and

(d) does not qualify to take full benefits pursuant to a pension or retirement plan.

History: Laws 2019, ch. 65, § 16.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-17. Energy transition bonds not public debt.

Energy transition bonds issued pursuant to the Energy Transition Act shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. Bondholders shall have no right to have taxes levied by the legislature or the taxing authority of any county, municipality or other political subdivision of this state for the payment of the principal of or interest on energy transition bonds. The issuance of energy transition bonds does not obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of the principal of or interest on the bonds.

History: Laws 2019, ch. 65, § 17.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-18. Energy transition bonds as legal investments.

Energy transition bonds shall be legal investments for all governmental units, permanent funds of the state, finance authorities, financial institutions, insurance companies, fiduciaries and other persons requiring statutory authority regarding legal investments.

History: Laws 2019, ch. 65, § 18.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-19. State pledge not to impair.

A. The state pledges to and agrees with the bondholders, any assignee and any financing parties that the state shall not take or permit any action that impairs the value of energy transition property, except as allowed pursuant to Section 6 [62-18-6 NMSA 1978] of the Energy Transition Act, or reduces, alters or impairs energy transition charges that are imposed, collected and remitted for the benefit of the bondholders, any assignee and any financing parties, until the entire principal of, interest on and redemption premium on the energy transition bonds, all financing costs and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid in full and performed in full.

B. Any person who issues energy transition bonds is permitted to include the pledge specified in Subsection A of this section in the energy transition bonds, ancillary agreements and documentation related to the issuance and marketing of the energy transition bonds.

History: Laws 2019, ch. 65, § 19.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-20. Choice of law.

The laws of the state of New Mexico as set forth in the Energy Transition Act shall govern the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right of creation of a security interest in energy transition property, an energy transition charge or a financing order.

History: Laws 2019, ch. 65, § 20.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-21. Conflicts.

In the event of any conflict between the Energy Transition Act and any other law regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any security interest in or transfer of energy transition property, the Energy Transition Act shall govern to the extent of the conflict.

History: Laws 2019, ch. 65, § 21.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-22. Validity on actions if act held invalid.

Effective on the date that energy transition bonds are first issued under the Energy Transition Act, if any provision of that act is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect the validity of any action allowed pursuant to that act that is taken by the commission, a qualifying utility, an assignee or any other person, a collection agent, a financing party, a bondholder or a party to an ancillary agreement and, to prevent the impairment of energy transition bonds issued or authorized in a financing order issued pursuant to the Energy Transition Act, any such action shall remain in full force and effect with respect to all energy transition bonds issued or authorized in a financing order pursuant to the Energy Transition Act before the date that such provision is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason.

History: Laws 2019, ch. 65, § 22.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

62-18-23. Applicability.

The provisions of the Energy Transition Act shall not apply to a qualifying utility that makes an initial application for a financing order more than twelve years after the effective date of that act. This section shall not preclude a qualifying utility for which the commission has issued a financing order from applying to the commission for a subsequent order amending the financing order, pursuant to Section 7 [62-18-7 NMSA 1978] of the Energy Transition Act.

History: Laws 2019, ch. 65, § 23.

Effective dates. — Laws 2019, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ARTICLE 19

Public Regulation Commission

Sec. 62-19-1. Short title. (Effective January 1, 2023.)

62-19-2. Definitions. (Effective January 1, 2023.)

62-19-3. Public regulation commission. (Effective January 1, 2023.)

62-19-4. Public regulation commission nominating committee. (Effective January 1, 2023.)

62-19-5. Qualifications of commissioners. (Effective January 1, 2023.)

62-19-6. Continuing education requirements for commissioners. (Effective January 1, 2023.)

Sec. 62-19-7.

Recusal of commissioner or hearing examiner. (Effective January 1, 2023.)

62-19-8. Prohibited acts; nominees; commissioners and employees. (Effective January 1, 2023.)

62-19-9. Commission; general powers and duties. (Effective January 1, 2023.)

62-19-10. Propane service; commission duties. (Effective January 1, 2023.)

62-19-11. Chief of staff; division directors; other staff. (Effective January 1, 2023.)

Sec.
 62-19-12. Commission; divisions. (Effective January 1, 2023.)
 62-19-13. Administrative services division; chief clerk. (Effective January 1, 2023.)
 62-19-14. Consumer relations division. (Effective January 1, 2023.)
 62-19-15. Legal division. (Effective January 1, 2023.)
 62-19-16. Transportation division. (Effective January 1, 2023.)
 62-19-17. Utility division. (Effective January 1, 2023.)
 62-19-18. Telecommunications bureau. (Effective January 1, 2023.)

Sec.
 62-19-19. Advisory staff. (Effective January 1, 2023.)
 62-19-20. Hearing examiners. (Effective January 1, 2023.)
 62-19-21. Commission rules; procedures for adoption. (Effective January 1, 2023.)
 62-19-22. Record of proceedings. (Effective January 1, 2023.)
 62-19-23. Ex parte communications. (Effective January 1, 2023.)
 62-19-24. Commission reports. (Effective January 1, 2023.)

62-19-1. Short title. (Effective January 1, 2023.)

Chapter 62, Article 19 NMSA 1978 may be cited as the "Public Regulation Commission Act".

History: Laws 1998, ch. 108, § 1; 2007, ch. 161, § 1; § 8-8-1, recompiled and amended as § 62-19-1 by Laws 2020, ch. 9, § 15.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled and amended former 8-8-1 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional

Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2020 amendment, effective January 1, 2023, deleted "Chapter 8, Article 8" and added "Chapter 62, Article 19".

The 2007 amendment, effective June 15, 2007, changed the statutory reference to the act.

62-19-2. Definitions. (Effective January 1, 2023.)

As used in the Public Regulation Commission Act:

- A. "commission" means the public regulation commission;
- B. "commissioner" means a person appointed to the public regulation commission; and
- C. "person" means an individual, corporation, firm, partnership, association, joint venture or similar legal entity.

History: Laws 1998, ch. 108, § 2; § 8-8-2, recompiled and amended as § 62-19-2 by Laws 2020, ch. 9, § 16.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled and amended former 8-8-2 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general

election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2020 amendment, effective January 1, 2023, removed "elected" from the definition of "commissioner" as used in the Public Regulation Commission Act; and in Subsection B, after "means a person", deleted "elected or".

62-19-3. Public regulation commission. (Effective January 1, 2023.)

A. The "public regulation commission", created in Article 11, Section 1 of the constitution of New Mexico, is composed of three commissioners appointed by the governor with the consent of the senate as provided in that article.

B. The commission shall annually elect one of its members chair, who shall preside at hearings. In the absence of the chair, the commission may appoint any other member to preside.

History: Laws 1998, ch. 108, § 3; § 8-8-3, recompiled and amended as § 62-19-3 by Laws 2020, ch. 9, § 17.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled and amended former 8-8-3 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2020 amendment, effective January 1, 2023, changed the composition of the public regulation commission from five elected commissioners to three commissioners appointed by the governor, and made certain technical amendments; and in Subsection A, after "composed of", deleted "five" and added "three", after "commissioners", deleted "elected from districts" and added "appointed by the governor with the consent of the senate", and after "article", deleted "and the Public Regulation Commission Apportionment Act".

62-19-4. Public regulation commission nominating committee. (Effective January 1, 2023.)

A. The "public regulation commission nominating committee" is created and consists of seven members who are:

- (1) knowledgeable about public utility regulation;
- (2) not employed by or on behalf of or have a contract with a public utility that is regulated by the commission;
- (3) not applicants or nominees for a position on the commission; and
- (4) appointed as follows:
 - (a) four members appointed one each by the speaker of the house of representatives, the minority floor leader of the house of representatives, the president pro tempore of the senate and the minority floor leader of the senate, with no more than two members being from the same political party;
 - (b) two members appointed one each by the secretary of energy, minerals and natural resources and the secretary of economic development; and
 - (c) one member who is a member of an Indian nation, tribe or pueblo appointed by the governor.

B. A committee member shall:

- (1) be a resident of New Mexico;
- (2) serve a four-year term; and
- (3) serve without compensation, but shall be reimbursed for expenses incurred in pursuit of the member's duties on the committee pursuant to the Per Diem and Mileage Act.

C. The committee and individual members shall be subject to the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978], the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978], the Financial Disclosure Act [10-16A-1 to 10-16A-8 NMSA 1978] and the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

D. Administrative support shall be provided to the committee by the staff of the commission.

E. Initial appointments to the committee shall be made by the appointing authorities prior to July 1, 2022. Subsequent appointments shall be made no later than thirty days before the end of a term.

F. The first meeting of the appointed members of the committee shall be held prior to September 1, 2022. The committee shall select one member to be chair and one member to be secretary. Following the first meeting, the committee shall meet as often as necessary in order to submit a list to the governor of no fewer than five qualified nominees for appointment to the commission for the terms beginning January 1, 2023. The list shall be developed to provide geographical diversity, and nominees on the list shall be from at least three different counties of the state.

G. Subsequent to January 1, 2023, the committee shall meet at least ninety days prior to the date on which the term of a commissioner ends and as often as necessary thereafter in order to submit a list to the governor, at least thirty days prior to the beginning of the new term, of no fewer than two qualified nominees from diverse geographical areas of the state for appointment to the commission for each commissioner position term that is ending.

H. Upon the occurrence of a vacancy in a commissioner position, the committee shall meet within thirty days of the date of the beginning of the vacancy and as often as necessary thereafter in order to submit a list to the governor, within sixty days of the first meeting after the vacancy occurs, of no fewer than two qualified nominees from diverse geographical areas of the state for appointment to the commission to fill the remainder of the term of each commissioner position that is vacant.

I. If a position on the committee becomes vacant during a term, a successor shall be selected in the same manner as the original appointment for that position and shall serve for the remainder of the term of the position vacated.

J. The committee shall actively solicit, accept and evaluate applications from qualified individuals for a position on the commission and may require an applicant to submit any information it deems relevant to the consideration of the individual's application.

K. The committee shall select nominees for submission to the governor who, in the committee's judgment, are best qualified to serve as a member of the commission.

L. A majority vote of all members of the committee in favor of a person is required for that person to be included on the list of qualified nominees submitted to the governor.

History: Laws 2020, ch. 9, § 18.

Effective dates. — Laws 2020, ch. 9, § 18 enacted a new section of the Public Regulation Commission Act, effective January 1, 2022, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional

Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

62-19-5. Qualifications of commissioners. (Effective January 1, 2023.)

A. Commissioners shall be persons who are independent of the industries regulated by the commission and shall possess demonstrated competence.

B. In order to be appointed as a commissioner, a person must be qualified for office by:

(1) having a baccalaureate degree from an institution of higher education that has been accredited by a regional or national accrediting body and at least ten years of professional experience in an area regulated by the commission or in the energy sector and involving a scope of work that includes accounting, public or business administration, economics, finance, statistics, policy, engineering or law; or

(2) having higher education resulting in at least a professional license or a post-graduate degree from an institution of higher education that has been accredited by a regional or national accrediting body in a field related to an area regulated by the commission, including accounting, public or business administration, economics, finance, statistics, policy, engineering or law, and at least ten years of professional experience within the person's field.

C. A commissioner shall not have a financial interest in a public utility in this state or elsewhere and shall not have been employed by a commission-regulated entity at any time during the two years prior to appointment to the commission.

D. Commissioners shall give their entire time to the business of the commission and shall not pursue any other business or vocation or hold any other office for profit.

E. As used in this section, "professional experience" means employment in which the prospective appointee for commissioner regularly made decisions requiring discretion and independent judgment and:

(1) engaged in policy analysis, research, consumer advocacy or implementation in an area regulated by the commission or in the energy sector;

(2) managed, as the head, deputy head or division director, a federal, state, tribal or local government department or division responsible for utilities, energy policy, transportation or construction; or

(3) managed a business or organization regulated by the commission or in the energy sector that had five or more employees during the time it was managed by the prospective appointee.

History: Laws 2013, ch. 64, § 1; 2019, ch. 212, § 210; § 8-8-3.1, recompiled and amended as § 62-19-5 by Laws 2020, ch. 9, § 19.

Compiler's notes. — Laws 2020, ch. 9, § 19 recompiled and amended former 8-8-3.1 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2020 amendment, effective January 1, 2023, removed "elected" and "candidate" from the requirements for a public regulation commissioner; removed certain references to election related activity; required commissioners to have a baccalaureate degree from an institution of higher education or a post-graduate degree in a field related to an area regulated by the commission, including policy, required at least ten years of professional experience within the person's field, prohibited a commissioner from having a financial interest in a public utility, from having been employed by a commission-regulated entity at any time during the two years prior to appointment to

the commission, and from pursuing any other business or holding any other office; in Subsection A, deleted "In addition to other requirements imposed by law" and added new language in the subsection; added subsection designation "B."; in Subsection B, in the introductory clause, after "to be", deleted "elected or", in Paragraph B(1), after "having", added "a baccalaureate degree from an institution of higher education that has been accredited by a regional or national accrediting body and", in Paragraph B(2), after "having", deleted "a total of ten years of combined professional experience as described in Paragraph (1) of this subsection and", after "professional license or a", deleted "baccalaureate" and added "post-graduate", after "accrediting body in", added "a field related to", after "statistics", added "policy", and after "engineering or law", added "and at least ten years of professional experience within the person's field"; added new Subsections C and D and redesignated former Subsection B as Subsection E; in Subsection E, in the introductory clause, after "which the", deleted "candidate or", in Paragraph E(1), after "research", added "consumer advocacy", in Paragraph E(2), after "utilities", added "energy policy", and in Paragraph E(3), after "managed by the", deleted "candidate or"; and deleted former Subsections C and D.

The 2019 amendment, effective April 3, 2019, revised the qualification criteria for being elected or appointed commissioner; in Subsection A, deleted Paragraph A(3); in Subsection C, after "declaration of candidacy," added the remainder of the subsection; and in Subsection D, after "Subsection A of this section," added "or that the affidavit of the person seeking nomination does not contain

sufficient information to determine if the person meets the requirements of Subsection A of this section".

Applicability. — Laws 2013, ch. 64, § 3 provided that the provisions of Laws 2013, ch. 64, § 1 apply to:

A. persons appointed to fill a public regulation commissioner vacancy after July 1, 2013; and

B. public regulation commissioners elected at the general election in 2014 and subsequent elections.

62-19-6. Continuing education requirements for commissioners. (Effective January 1, 2023.)

A. Beginning July 1, 2013, a commissioner shall complete:

(1) an ethics certificate course provided in person or online by a New Mexico public post-secondary educational institution in the first twelve-month period after taking office and at least one two-hour ethics course in each subsequent twelve-month period that the commissioner serves in office; and

(2) at least thirty-two hours of continuing education relevant to the work of the commission in each twelve-month period that the commissioner serves in office. Continuing education courses shall be endorsed by the national association of regulatory utility commissioners or by the relevant licensing or professional association for a qualifying area of study for degree holders pursuant to this section.

B. A commissioner shall be responsible for having the endorsing organization submit certification of completion of the hours of education required pursuant to Subsection A of this section to the commission's chief of staff.

C. If a commissioner fails to comply with the education requirements in Subsection A of this section by the last day of a twelve-month period, the commissioner's compensation for performing the duties of the office shall be withheld by the commission until the requirements for the preceding twelve-month period or periods have been met.

History: Laws 2013, ch. 64, § 2; § 8-8-3.2, **recompiled and amended as § 62-19-6 by Laws 2020, ch. 9, § 20.**

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled and amended former 8-8-3.2 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJCS/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the

general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2020 amendment, effective January 1, 2023, in Subsection C, deleted "As an exception to Section 8-1-1 NMSA 1978".

62-19-7. Recusal of commissioner or hearing examiner. (Effective January 1, 2023.)

A. A commissioner or hearing examiner shall self recuse in any adjudicatory proceeding in which the commissioner or hearing examiner is unable to make a fair and impartial decision or in which there is reasonable doubt about whether the commissioner or hearing examiner can make a fair and impartial decision, including:

(1) when the commissioner or hearing examiner has a personal bias or prejudice concerning a party or its representative or has prejudged a disputed evidentiary fact involved in a proceeding prior to hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship, including a professional, personal, familial or other intimate relationship, that renders the commissioner or hearing examiner unable to exercise the commissioner's or hearing examiner's functions impartially;

(2) when the commissioner or hearing examiner has a pecuniary interest in the outcome of the proceeding other than as a customer of a party;

(3) when in previous employment the commissioner or hearing examiner served as an attorney, adviser, consultant or witness in the matter in controversy; or

(4) when, as a nominee for appointment to the office of public regulation commissioner, the nominee announced how the nominee would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

B. If a commissioner or hearing examiner fails to self recuse when it appears that grounds exist, a party shall promptly notify the commissioner or hearing examiner of the apparent grounds for recusal. If the commissioner or hearing examiner declines to self recuse upon request of a party, the commissioner or hearing examiner shall provide a full explanation in support of the refusal.

History: Laws 1998, ch. 108, § 18; § 8-8-18, recompiled and amended as § 62-19-7 by Laws 2020, ch. 9, § 22.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled and amended former 8-8-18 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2020 amendment, effective January 1, 2023, removed references to "candidate", and made certain technical amendments; and in Subsection A, Paragraph A(4),

after "when, as a", deleted "candidate for" and added "nominee for appointment to the", after "office", added "of public regulation commissioner", and substituted each occurrence of "he" with "the nominee".

ANNOTATIONS

Recusal not warranted.—Commissioners properly declined to recuse themselves since the timing of their remarks indicated that they were based on the evidence adduced in the rate case, as well the direct testimony filed by the public service company of New Mexico (PNM) in the present case. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

62-19-8. Prohibited acts; nominees; commissioners and employees. (Effective January 1, 2023.)

A. As used in this section, in addition to the definitions provided in Section 16 [62-19-2 NMSA 1978] of this 2020 act:

(1) "affiliated interest" means a person who directly controls or is controlled by or is under common control with a regulated entity, including an agent, representative, attorney, employee, officer, owner, director or partner of an affiliated interest. For the purposes of this definition, "control" includes the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership, control or holding with the power to vote of ten percent or more of the person's voting securities;

(2) "intervenor" means a person who is intervening as a party in an adjudicatory matter or commenting in a rulemaking pending before the commission or has intervened in an adjudicatory or rulemaking matter before the commission within the preceding twenty-four months, including an agent, representative, attorney, employee, officer, owner, director, partner or member of an intervenor;

(3) "pecuniary interest" includes owning or controlling securities; serving as an officer, director, partner, owner, employee, attorney or consultant; or otherwise benefiting from a business relationship. "Pecuniary interest" does not include an investment in a mutual fund or similar third-party-controlled investment, pension or disability benefits or an interest in capital credits of a rural electric cooperative or telephone cooperative because of current or past patronage; and

(4) "regulated entity" means a person whose charges for services to the public are regulated by the commission and includes any direct or emerging competitors of a regulated entity and includes an agent, representative, attorney, employee, officer, owner, director or partner of the regulated entity.

B. In addition to the requirements of the Financial Disclosure Act [10-16A-1 through 10-16A-8 NMSA 1978] and the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978], nominees for appointment to the commission, commissioners and employees of the commission shall comply with the requirements of the Public Regulation Commission Act, as applicable.

C. A nominee for appointment to the commission shall not solicit or accept anything of value, either directly or indirectly, from a person whose charges for services to the public are regulated by the commission. For the purposes of this subsection, "anything of value" includes money, in-kind contributions and volunteer services to the nominee or the nominee's organization, but does not include pension or disability benefits.

D. A commissioner or employee of the commission shall not:

(1) accept anything of value from a regulated entity, affiliated interest or intervenor. For the purposes of this paragraph, "anything of value" does not include:

- (a) the cost of refreshments totaling no more than five dollars (\$5.00) a day or refreshments at a public reception or other public social function that are available to all guests equally;
- (b) inexpensive promotional items that are available to all customers of the regulated entity, affiliated interest or intervenor; or
- (c) pension or disability benefits received from a regulated entity, affiliated interest or intervenor;
- (2) have a pecuniary interest in a regulated entity, affiliated interest or intervenor, and if a pecuniary interest in an intervenor develops, the commissioner or employee shall divest that interest or self recuse from the proceeding with the intervenor interest; or
- (3) solicit any regulated entity, affiliated interest or intervenor to appoint a person to a position or employment in any capacity.

E. After leaving the commission:

- (1) a former commissioner shall not be employed or retained in a position that requires appearances before the commission by a regulated entity, affiliated interest or intervenor within two years of the former commissioner's separation from the commission;
- (2) a former employee shall not appear before the commission representing a party to an adjudication or a participant in a rulemaking within one year of ceasing to be an employee; and
- (3) a former commissioner or employee shall not represent a party before the commission or a court in a matter that was pending before the commission while the commissioner or employee was associated with the commission and in which the former commissioner or employee was personally and substantially involved in the matter.

F. The attorney general or a district attorney may institute a civil action in the district court for Santa Fe county or, in the attorney general's or a district attorney's discretion, the district court for the county in which a defendant resides if a violation of this section has occurred or to prevent a violation of this section. A civil penalty may be assessed in the amount of two hundred fifty dollars (\$250) for each violation, not to exceed five thousand dollars (\$5,000).

History: Laws 1998, ch. 108, § 19; § 8-8-19, recompiled and amended as § 62-19-8 by Laws 2020, ch. 9, § 23.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled and amended former 8-8-19 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978; effective January 1, 2023, contingent upon the adoption of Laws 2019, SJCS/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2020 amendment, effective January 1, 2023, substituted references to "candidate" with "nominee", and made certain technical amendments; in the section heading, deleted "candidates" and added "nominees"; in

Subsection A, in the introductory clause, after "Section", deleted "2 of the Public Regulation Commission Act" and added "16 of this 2020 act"; in Subsection B, after "Governmental Conduct Act", deleted "candidates for" and added "nominees for appointment to", and after "requirements of", deleted "this section and Sections 17 and 18 of"; in Subsection C, after "A", deleted "candidate for election" and added "nominee for appointment", deleted paragraph designation "(1)" and Paragraph C(2); and after "volunteer services to the", deleted "candidate or his campaign" and added "nominee or the nominee's"; and in Paragraph D(1), in the introductory paragraph, deleted "For the purposes of this paragraph, a commissioner may accept allowable campaign contributions when campaigning for reelection."

62-19-9. Commission; general powers and duties. (Effective January 1, 2023.)

A. The commission shall administer and enforce the laws with which it is charged and has every power conferred by law.

B. The commission may:

- (1) subject to legislative appropriation, appoint and employ such professional, technical and clerical assistance as it deems necessary to assist it in performing its powers and duties;
- (2) delegate authority to subordinates as it deems necessary and appropriate, clearly delineating such delegated authority and any limitations;
- (3) retain competent attorneys to handle the legal matters of the commission and give advice and counsel in regard to any matter connected with the duties of the commission and, in the discretion of the commission, to represent the commission in any legal proceeding;
- (4) organize into organizational units as necessary to enable it to function most efficiently, subject to provisions of law requiring or establishing specific organizational units;

(5) take administrative action by issuing orders not inconsistent with law to assure implementation of and compliance with the provisions of law for which the commission is responsible and to enforce those orders by appropriate administrative action and court proceedings;

(6) conduct research and studies to improve the commission's operations or the provision of services to the citizens of New Mexico;

(7) conduct investigations as necessary to carry out the commission's responsibilities;

(8) apply for and accept grants and donations in the name of the state to carry out its powers and duties;

(9) enter into contracts to carry out its powers and duties;

(10) adopt such reasonable administrative, regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties;

(11) cooperate with tribal and pueblo governments on topics over which the commission and the other governments have jurisdiction and conduct joint investigations, hold joint hearings and issue joint or concurrent orders as appropriate; and

(12) apply to the district court for injunctions to prevent violations of any laws that it administers or rules or orders adopted pursuant to those laws.

C. The commission shall:

(1) prepare an annual budget for submission to the legislature;

(2) provide for surety bond coverage for all employees of the commission as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978] and pay the costs of such bonds;

(3) adopt rules to streamline the resolution of cases before it when appropriate by:

(a) the use of hearing examiners;

(b) the taking of evidence with the least delay practicable;

(c) limiting repetitious testimony; and

(d) adopting procedures for resolving cases in ways other than by trial-type hearings when appropriate, including consent calendars, conferences, settlements, mediation, arbitration and other alternative dispute resolution methods and the use of staff decisions; and

(4) provide a toll-free telephone number and publish it and the commission's general telephone number in local telephone directories.

D. A majority of the commission constitutes a quorum for the transaction of business; provided, however, that a majority vote of the commission is needed for a final decision of the commission.

History: Laws 1998, ch. 108, § 4; § 8-8-4, recompiled as § 62-19-9 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled former 8-8-4 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023; contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

ANNOTATIONS

Hearings.—Where the PRC does not delegate its authority to a hearing examiner, but rather, conducts an evidentiary hearing before a full complement of commissioners, unexplained absences by commissioners should be the exception rather than the rule. The commissioners of the PRC have a constitutional and statutory obligation

to participate actively and fully in the proceedings before them. *Albuquerque Bernalillo County Water Util. Auth. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494.

Scope of commission's enforcement authority. — Although the PRC may seek injunctions and impose an administrative fine on a telecommunications provider for any act or omission that the provider knew or should have known was a violation of any applicable law or rule or order of the PRC, the PRC's regulatory authority is not limited to those remedies since the legislature gave it discretion to enforce its orders by appropriate administrative action and court proceedings, which includes discretion to issue an order requiring a telecommunications provider to provide consumer credit or refunds in order to prevent violations of the New Mexico Telecommunications Act. *Qwest Corp. v. N.M. Public Regulation Comm'n*, 2006-NMSC-042, 140 N.M. 440, 143 P.3d 478.

62-19-10. Propane service; commission duties. (Effective January 1, 2023.)

A. The commission shall adopt rules to protect consumers' rights with respect to propane service.

B. The commission shall report by December 2009 to the appropriate interim legislative committee appointed by the New Mexico legislative council on the progress of the rulemaking pursuant to this section.

History: *Laws 2009, ch. 216, § 1; § 8-8-4.1, recompiled as § 62-19-10 by Laws 2020, ch. 9, § 59.*

Compiler's notes. — *Laws 2020, ch. 9, § 15 recompiled former 8-8-4.1 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon*

the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

62-19-11. Chief of staff; division directors; other staff. (Effective January 1, 2023.)

A. The commission shall appoint a "chief of staff" who is responsible for the day-to-day operations of the commission staff under the general direction of the commission. The chief of staff shall serve at the pleasure of the commission.

B. With the consent of the commission, the chief of staff shall appoint division directors. Appointments shall be made without reference to party affiliation and solely on the ground of fitness to perform the duties of their offices.

C. Each director, with the consent of the chief of staff, shall employ such professional, technical and support staff as necessary to carry out the duties of the director's division. Employees shall be hired solely on the ground of their fitness to perform the job for which they are hired. Division staff are subject to the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

History: *Laws 1998, ch. 108, § 5; 2000, ch. 57, § 1; 2013, ch. 74, § 1; § 8-8-5, recompiled as § 62-19-11 by Laws 2020, ch. 9, § 59.*

Compiler's notes. — *Laws 2020, ch. 9, § 59 recompiled former 8-8-5 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.*

The 2013 amendment, effective March 29, 2013, in Subsection C, in the third sentence, deleted "Except as provided in Subsection D of this section"; and deleted former Subsection D, which permitted the superintendent of insurance to designate division positions with the consent of the chief of staff.

The 2000 amendment, effective May 17, 2000, inserted "Except as provided in Subsection D of this section" in the last sentence of Subsection C and added Subsection D.

62-19-12. Commission; divisions. (Effective January 1, 2023.)

The commission includes the following organizational units:

- A. the administrative services division;
- B. the consumer relations division;
- C. the legal division;
- D. the transportation division; and
- E. the utility division.

History: *Laws 1998, ch. 108, § 6; 2007, ch. 161, § 2; 2013, ch. 74, § 2; 2020, ch. 9, § 21; § 8-8-6, recompiled as § 62-19-12 by Laws 2020, ch. 9, § 59.*

Compiler's notes. — *Laws 2020, ch. 9, § 15 recompiled and amended former 8-8-6 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the*

general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2020 amendment, effective July 1, 2021, removed the fire marshal division from the public regulation commission; and deleted Subsection F.

62-19-13. Administrative services division; chief clerk. (Effective January 1, 2023.)

A. The director of the administrative services division of the commission shall record the judgments, rules, orders and other proceedings of the commission and make a complete index to the judgments, rules, orders and other proceedings; issue and attest all processes issuing from the commission and affix the seal of the commission to them; and preserve the seal and other property belonging to the commission.

B. The administrative services division shall perform the following functions:

- (1) case docketing;
- (2) budget and accounting;
- (3) personnel services;
- (4) procurement; and
- (5) information systems services.

History: Laws 1998, ch. 108, § 7; 2001, ch. 245, § 1; 2013, ch. 75, § 10; § 8-8-7, recompiled as § 62-19-13 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled former 8-8-7 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2013 amendment, effective July 1, 2013, eliminated the corporations bureau; in Subsection B, in the introductory sentence, after "division", deleted "includes the corporations bureau" and "and deleted Subsection C, which prescribed the duties of the corporations bureau."

The 2001 amendment, effective July 1, 2001, substituted "The director of the administrative services division of the commission" for "The chief of staff shall appoint a 'chief clerk' who" in Subsection A; in Subsection B, deleted "The chief clerk shall direct" from the beginning of the subsection; substituted "includes" for "including"; and inserted "shall perform" before "information systems services."

62-19-14. Consumer relations division. (Effective January 1, 2023.)

A. The consumer relations division shall:

- (1) receive and investigate nondocketed consumer complaints and assist consumers in resolving, in a fair and timely manner, complaints against a person under the authority of the commission, including mediation and other methods of alternative dispute resolution; provided, however, that assistance pursuant to this paragraph does not include legal representation of a private complainant in an adjudicatory proceeding;
- (2) work with the consumer protection division of the attorney general's office, the governor's constituent services office and other state agencies as needed to ensure fair and timely resolution of complaints;
- (3) advise the commission on how to maximize public input into commission proceedings, including ways to eliminate language, disability and other barriers;
- (4) identify, research and advise the commission on consumer issues;
- (5) assist the commission in the development and implementation of consumer policies and programs; and
- (6) perform such other duties as prescribed by the commission.

B. All complaints received by the division with regard to quality or quantity of service provided by a regulated entity or its competitors shall be recorded by the division for the purpose of determining general concerns of consumers. A report of consumer complaints and their status shall be included in the commission's annual report.

History: Laws 1998, ch. 108, § 8; § 8-8-8, recompiled as § 62-19-14 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled former 8-8-8 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon

the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

62-19-15. Legal division. (Effective January 1, 2023.)

A. The commission shall set minimum requirements for the director of the legal division, including membership in the New Mexico bar and administrative and supervisory experience.

B. The legal division shall:

- (1) provide legal counsel for the commission in matters not involving advice on contested proceedings before the commission; and
- (2) provide legal counsel to all divisions, including the legal component of the staff that represents the public interest in matters before the commission.

History: Laws 1998, ch. 108, § 10; § 8-8-10, recompiled as § 62-19-15 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled former 8-8-10 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

ANNOTATIONS

Consolidation of legal division and office of general counsel under a single manager.—The legal division of the public regulation commission and the office of general counsel may not be consolidated under a single attorney manager under any circumstances. 2012 Op. Att'y Gen. No. 12-06.

Single manager of the legal division and the office of general counsel. — The appointment of a single attorney to manage the legal division of the public regulation

commission and the office of general counsel as separate units where the single attorney manager would remain a member of the office of general counsel and engage in advisory activities with commissioners while performing administrative functions for the legal division, such as scheduling work assignments, performance review, and hiring and discipline, is not permissible. 2012 Op. Att'y Gen. No. 12-06.

Movement of attorneys between the legal division and of the office of general counsel. — Although the Public Regulation Commission Act does not prohibit the routine movement of attorneys between the legal division and the office of general counsel, the movement of attorneys will implicate Rule 16-107 NMRA of the rules of professional conduct which will require each attorney to undertake a conflicts analysis before accepting any assignment to ensure that there is no significant risk that the attorney's representation of the commission or a division will not be materially limited by the attorney's responsibilities to other clients within the agency. 2012 Op. Att'y Gen. No. 12-06.

62-19-16. Transportation division. (Effective January 1, 2023.)

The transportation division shall serve as staff to the commission for the following functions, as provided by law:

- A. motor carrier regulation and enforcement;
- B. railroad safety enforcement;
- C. pipeline safety; and
- D. ambulance standards.

History: Laws 1998, ch. 108, § 11; § 8-8-11; recompiled as § 62-19-16 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled former 8-8-11 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon

the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

62-19-17. Utility division. (Effective January 1, 2023.)

A. The utility division shall serve as staff to the commission in the regulation of electric, natural gas, renewable energy sources, telecommunications and water and wastewater systems as provided by law.

B. The commission shall set minimum educational and experience requirements for the director of the utility division.

C. The utility division shall represent the public interest in utility matters before the commission and may present testimony and evidence and cross-examine witnesses. In order to represent the public interest, the utility division shall present to the commission its beliefs on how the commission should fulfill its responsibility to balance the public interest, consumer interest and investor interest.

D. The utility division shall perform the functions of the telecommunications department of the former state corporation commission and staff functions, not including advisory functions, of the former New Mexico public utility commission.

E. Utility division staff shall not have ex parte communications with commissioners or a hearing examiner assigned to a utility case, except as expressly permitted pursuant to Section 8-8-17 NMSA 1978.

History: Laws 1998, ch. 108, § 12; 2003, ch. 346, § 1; § 8-8-12, recompiled as § 62-19-17 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled former 8-8-12 NMSA 1978 as part of Chapter 62, Article

19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was

adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2003 amendment, effective June 20, 2003, added the second sentence in Subsection C; and added the exception to Subsection E.

62-19-18. Telecommunications bureau. (Effective January 1, 2023.)

A. The "telecommunications bureau" is created in the utility division of the public regulation commission.

B. The telecommunications bureau shall:

- (1) review disputes between telecommunications providers;
- (2) investigate each complaint on an expedited basis;
- (3) address other telecommunications-related duties as required by the New Mexico Telecommunications Act [Chapter 63, Article 9A NMSA 1978] and the commission; and
- (4) recommend actions to the commission.

C. Each complaint shall be resolved by the commission within sixty days unless extended for good cause by an order of the commission or hearing examiner that states with specificity the reason for and length of the extension.

History: Laws 2000, ch. 100, § 1; 2000, ch. 102, § 1; § 8-8-12.1, recompiled as § 62-19-18 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled and amended former 8-8-12.1 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1,

2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

62-19-19. Advisory staff. (Effective January 1, 2023.)

A. The chief of staff may hire, with the consent of the commission, advisory staff with expertise in regulatory law, engineering, economics and other professional or technical disciplines to advise the commission on any matter before the commission. The chief of staff may hire on a temporary, term or contract basis such other experts or staff as the commission requires for a particular case.

B. Advisory staff shall:

- (1) analyze case records;
- (2) analyze recommended decisions;
- (3) advise the commission on policy issues;
- (4) assist the commission in the development of rules;
- (5) assist the commission in writing final orders; and
- (6) perform such other duties as required by the chief of staff.

History: Laws 1998, ch. 108, § 13; § 8-8-13, recompiled as § 62-19-19 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled former 8-8-13 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

ANNOTATIONS

Expert's status.—Although an expert's relationship with the PRC and the expert's advice fell within the definition of advisory staff in Section 8-8-13(A) NMSA 1978 so that the PRC was not required to provide the parties with the substance of the expert's advice, under another set of facts the expert could fall under the category of a non-party expert subject to the restrictions on ex parte communications of Section 8-8-17 NMSA 1978. *Qwest Corp. v. N.M. Public Regulation Comm'n*, 2006-NMSC-042, 140 N.M. 440, 143 P.3d 478.

62-19-20. Hearing examiners. (Effective January 1, 2023.)

A. The commission may appoint a commissioner or a hearing examiner to preside over any matter before the commission, including rulemakings, adjudicatory hearings and administrative matters.

B. A hearing examiner shall provide the commission with a recommended decision on the matter assigned to the hearing examiner, including findings of fact and conclusions of law. The

recommended decision shall be provided to the parties, and they may file exceptions to the decision prior to the final decision of the commission.

C. When the commission has appointed a hearing examiner to preside over a matter, at least one member of the commission shall, at the request of a party to the proceedings, attend oral argument.

History: Laws 1998, ch. 108, § 14; 2003, ch. 346, § 2; 2013, ch. 74, § 3; § 8-8-14, recomplied as § 62-19-20 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recomplied former 8-8-14 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was

adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2013 amendment, effective March 29, 2013, deleted reference to the Insurance Code; and in Subsection B, deleted "Except as provided in the New Mexico Insurance Code".

The 2003 amendment, effective June 20, 2003, added Subsection C.

62-19-21. Commission rules; procedures for adoption. (Effective January 1, 2023.)

A. Unless otherwise provided by law, no rule affecting a person outside the commission shall be adopted, amended or repealed except after public notice and public hearing before the commission or a hearing examiner designated by the commission.

B. Notice of the subject matter of the rule, the action proposed to be taken, the manner in which interested persons may present their views and the method by which copies of the proposed rule, amendment or repealing provisions may be obtained shall be published at least once at least thirty days prior to the hearing date in the New Mexico register and two newspapers of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice. For each rule, amendment or repealing provision that affects only one or a limited number of municipalities, towns, villages or counties, notice shall be published in the largest circulation newspaper published and distributed locally in those areas as well as in a newspaper of general circulation in the state. Additional notice may be made by posting on the internet or by using other alternative methods of informing interested persons.

C. If the commission finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the public peace, health, safety or general welfare, the commission may dispense with notice and public hearing and adopt, amend or suspend the rule as an emergency. The commission's finding of why an emergency exists shall be incorporated in the emergency rule, amendment or suspension filed with the state records center. Upon adoption of an emergency rule that is intended to remain in effect for longer than sixty days, notice shall be given within seven days of filing the rule as required in this section for proposed rules.

D. The commission shall issue a rule within eighteen months following the publication of that proposed rule or it shall be deemed to be withdrawn. The commission may propose the same or revised rule in a subsequent rulemaking.

E. All rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978]. Emergency rules shall be effective on the date the rules are filed with the state records center. All other rules shall be effective fifteen days after filing, unless a later date is provided by the rule.

History: Laws 1998, ch. 108, § 15; 2001, ch. 117, § 1; § 8-8-15, recomplied as § 62-19-21 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recomplied former 8-8-15 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2001 amendment, effective July 1, 2001, in Subsection B, revised the procedures for providing notice of

proposed rulemaking by changing the day of publication requirement so that notice is to appear thirty days before the hearing date, instead of sixty; changing the publications in which notice shall be posted to two newspapers of general circulation and the New Mexico register, instead of three newspapers; changed the day that notice needs to be mailed to those who provided a written request for advanced notice to thirty days before the hearing date, instead of sixty; and made a provision for emergency rules to become effective the date they are filed in Subsection E.

62-19-22. Record of proceedings. (Effective January 1, 2023.)

Unless otherwise provided by law, the commission may by rule provide that oral proceedings before the commission may be taken by any means that provides a full and complete record, including tape recording or stenography. The commission by rule shall determine when tape recordings are transcribed. A party to the proceeding may request a copy of a tape recording or a written transcript if one is provided. The commission may charge a reasonable fee for a copy of a proceeding. Copy costs shall be determined by the commission by rule and money collected shall be deposited in the general fund.

History: Laws 1998, ch. 108, § 16; § 8-8-16, recompiled as § 62-19-22 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled former 8-8-16 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon

the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

62-19-23. Ex parte communications. (Effective January 1, 2023.)

A. A commissioner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking after the record has been closed or a pending adjudication.

B. A hearing examiner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking or adjudication.

C. Notwithstanding the provisions of Subsections A and B of this section, the following ex parte communications are permitted:

(1) where circumstances require, ex parte communications for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are allowed if the commissioner or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication and the commissioner or hearing examiner makes provision to promptly notify all other parties of the substance of the ex parte communication;

(2) a commissioner may consult with another commissioner or with advisory staff whose function is to advise the commission in carrying out the commissioner's rulemaking or adjudicative responsibilities;

(3) a hearing examiner may consult with the commission's advisory staff;

(4) a commissioner or hearing examiner may obtain the advice of a nonparty expert on an issue raised in the rulemaking or adjudication if the commissioner or hearing examiner gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond; and

(5) pursuant to the public regulation commission's rulemaking authority a party to a proceeding may consult with the commission's advisory staff. By July 1, 2004, the commission shall establish such rules.

D. A commissioner or hearing examiner who receives or who makes or knowingly causes to be made a communication prohibited by this section shall disclose it to all parties and give other parties an opportunity to respond.

E. Upon receipt of a communication knowingly made or caused to be made by a party to a commissioner or hearing examiner in violation of this section, the commissioner or hearing examiner may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

History: Laws 1998, ch. 108, § 17; 2003, ch. 346, § 3; 2004, ch. 81, § 1; § 8-8-17, recompiled as § 62-19-23 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled former 8-8-17 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon

the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

The 2004 amendments, effective May 19, 2004, revised Paragraph (2) of Subsection C to require the adoption of rules governing consultation with the commission's advisory staff.

The 2003 amendment, effective June 20, 2003, added Paragraph C(5).

ANNOTATIONS

Expert's status.—Although an expert's relationship with the PRC and the expert's advice fell within the

definition of advisory staff in Section 8-8-13(A) NMSA 1978 so that the PRC was not required to provide the parties with the substance of the expert's advice, under another set of facts the expert could fall under the category of a non-party expert subject to the restrictions on ex parte communications of Section 8-8-17 NMSA 1978. *Qwest Corp. v. N.M. Public Regulation Comm'n*, 2006-NMSC-042, 140 N.M. 440, 143 P.3d 478.

62-19-24. Commission reports. (Effective January 1, 2023.)

By December 1 of each year, the commission shall report to the legislature and the governor regarding its activities for the previous year in sufficient detail to disclose the workings of the commission and the impact of regulation on the industries regulated by the commission. The report may include suggestions and recommended changes in law, as the commission deems appropriate, that would be in the public interest.

History: Laws 1998, ch. 108, § 20; § 8-8-20, recompiled as § 62-19-24 by Laws 2020, ch. 9, § 59.

Compiler's notes. — Laws 2020, ch. 9, § 15 recompiled former 8-8-20 NMSA 1978 as part of Chapter 62, Article 19 NMSA 1978, effective January 1, 2023, contingent upon

the adoption of Laws 2019, SJC/SRC/SJR Nos. 1 and 4, Constitutional Amendment 1, at the general election held on November 3, 2020. Constitutional Amendment 1 was adopted by a vote of 445,655 for and 355,471 against. The section number was assigned by the compiler.

